

ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

164:2;168:4;172:5,12; 182:23;183:6,13,18,20 collecting (1) 195:24 collude (1) 101:17 colluded (3) 101:11,13,15 collusion (2) 101:17;115:6 comfortable (1) 48:5 communications (5) 67:22;134:5,20; 142:20;194:11 company (4) 24:2,5;148:14;171:10 comparison (1) 217:24 compete (1) 188:20 complaint (17) 8:18,21,24;9:2,25;14; 86:7;100:11,17,19; 102:5;105:20;106:18; 108:11;131:2,3,9;140:23 complete (1) 223:10 completed (1) 143:13 complicated (1) 169:9 Compound (5) 158:18;200:10;210:5; 215:17;219:6 computer (4) 73:21,22,23,25 concentrate (1) 101:22 concern (5) 21:11;139:11;140:5; 141:16;181:21 concerned (2) 204:20;210:19 concerning (2) 102:19;193:21 concession (1) 194:23 concluded (2) 142:17;191:17 conclusion (1) 50:11 condition (1) 206:18 conduct (1) 49:24 conducting (1) 93:3 conference (1) 142:17 confident (1) 47:23 confidential (2)	138:25;194:10 conflict (8) 21:12;50:7,19;54:13; 57:21;58:8;77:22; 117:23 conflicts (1) 77:23 confusing (1) 183:17 connection (8) 14:18;21:18;53:25; 56:11;65:22;81:6;89:16; 118:9 consequence (1) 49:24 consequences (1) 175:17 consider (1) 198:4 consideration (4) 97:20;98:17;111:22; 112:3 considered (1) 197:23 considering (3) 45:9;46:13;141:6 conspiring (1) 114:23 constantly (1) 62:12 consult (2) 125:5;190:6 consulted (1) 190:8 consulting (2) 190:9;217:11 contained (2) 100:10,17 contains (1) 194:10 Cont'd (1) 3:1 contention (1) 194:21 contest (1) 104:16 continuation (2) 137:13;166:2 continue (6) 33:10;109:24;121:22; 143:12;175:11,12 contrary (1) 137:4 control (2) 166:7;205:18 conversation (12) 59:11,16;67:7;132:13; 191:23;211:7;214:8,10, 11,12;217:6;218:8 conversations (8) 65:21;66:8,19;67:4,9; 193:13;194:13;196:5 copies (4)	8:22;19:17;122:9; 195:2 copy (7) 9:5;68:18;185:20,25; 186:9;193:12,13 correction (4) 189:21,23;190:4,5 counsel (18) 39:14;83:13;84:17,25; 85:6,9,17;86:6,19,21; 87:7;103:6;112:9; 124:13,25;125:6,25; 130:5 counsel's (1) 85:24 count (5) 34:6,11,12;86:6;87:4 COUNTY (1) 223:5 couple (2) 27:3,4 course (7) 10:21;44:2;135:8,18; 138:20,25;198:7 court (55) 36:19;52:23;83:18,24; 84:22;85:12;96:3;97:12; 117:9;119:19,22; 121:11;130:11,13,16; 131:23,23,24;132:6,17; 134:22;135:3,11,12,16, 19,21,22,24;136:5,10,21, 24;137:8,16,19,22; 138:6,15,21,24;139:8, 12,23;140:6,14;141:2,9; 142:3,15;162:18;170:9; 173:19;181:22;182:6 courtesy (1) 83:10 covered (1) 28:2 covering (1) 193:25 CPLR (5) 96:19;118:24;119:4; 133:6,10 created (5) 114:15,18,21,23,24 creative (1) 157:24 cross (2) 96:5;140:13 crossed (1) 85:2 current (1) 11:18 currently (2) 14:2;140:21 cut (1) 189:13	D&K (51) 30:10;81:23;82:8,9; 84:20;85:8,9,9,107:17, 17,18,21;108:7;148:13, 24,25;149:4,21;150:15; 151:5,13,22;152:4; 153:7,9,17;154:21; 157:21;162:3;167:2,14; 168:7,25;169:13,17; 183:8,13,15,18,25; 184:8;200:20;209:14; 212:18,20;219:4,10; 220:11,18,20;221:13,14 Dalia (98) 6:12;8:16,17,17,20,22, 25;9:4,5,8,8,12;17:9; 18:24;19:13,14;22:9,11; 24:7,20;25:9,13;26:9; 28:20;35:6;36:14;37:10, 11,15,23;42:19,20,23, 25;43:6;52:19;68:5,6,9, 10,13,14;69:21;73:17; 80:21;82:20;88:9,90:25; 92:14,15,19,21;93:2,12; 94:8,10,20,24;95:18,18; 97:9,9,22,22;98:20; 108:12;110:10;111:24; 112:9,16;135:10,12; 136:8,23;137:14; 138:14;140:23;149:7,9; 151:18;162:14;163:8; 168:16,17;173:10,11,12, 12;185:7;193:23;196:6, 7;202:24;204:4;209:16; 216:22;223:7,17 Dalia's (2) 86:8;221:25 date (18) 7:8;10:4,5;14:24; 25:23;41:2;70:8;90:10, 11;91:7;92:7,94:19; 104:20;139:6;141:24; 168:21;192:14;222:4 dated (4) 88:10;94:10;108:2; 193:24 dates (3) 38:23;162:19;194:14 daughter (3) 35:2;49:24;178:22 David (15) 152:15;159:15,21; 160:12;161:13,15;163:9, 22;166:3,5,10;171:19; 172:12,25;173:6 day (19) 9:20;11:7;26:12,21, 22,23,24;27:2;44:13,19, 21;95:24;108:9;125:15; 130:25;141:22;143:4; 205:6;223:21 days (20) 11:13,16;25:19;27:16,	22;28:7;29:2;30:7,15; 31:17;210:25;211:3,5, 16;212:22;213:2; 218:18,22;219:2,14 de (1) 119:9 deal (2) 115:3;157:22 debt (3) 154:11;164:4;169:24 December (19) 68:20,21;71:13;75:10; 77:20;79:6;80:20;82:25; 83:8,12;88:5,10,13; 92:21;93:2;94:14; 125:16;167:19;223:9 decided (2) 59:19;170:5 decision (1) 141:13 default (4) 168:20,24;184:17,20 defeat (1) 153:25 defeated (1) 197:2 defendant (1) 9:5 defining (1) 77:2 Definitely (2) 114:25;115:2 definition (1) 79:11 Delaware (3) 14:20;22:10,11 delay (1) 188:8 dellajo@duanemorriscom (1) 3:17 DELLAPORTAS (74) 3:15;34:14,21;39:7; 40:18;57:23;58:3;81:20; 82:2,6,11,16;83:4,9,13, 22;84:13;87:3;95:21; 96:2,11,25;97:13,23,25; 98:13;113:3;119:10; 120:20,24;121:11,14,23; 122:11;130:4,21;131:3, 8,13,21;133:17,23; 136:14;137:5,12;139:9, 10,23;140:4;141:20; 144:10;146:3;152:21; 155:23;156:5;158:21; 163:4;167:4,22;176:17, 21;179:15,18,21;182:19, 24;203:14,23;204:8; 210:6;215:19,22,25; 217:8 demand (1) 196:9 denied (1) 102:5
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D

E

ORLY GENDER VS.
DALIA GENDER, et al

Pg 3 of 150

DALIA GENDER
December 13, 2012

<p>existed (1) 190:6</p> <p>exited (1) 116:18</p> <p>exonerate (2) 78:23;87:24</p> <p>exonerated (2) 78:11;111:18</p> <p>exoneration (3) 77:19;92:22;93:2</p> <p>expenses (1) 81:5</p> <p>explain (2) 156:24;182:11</p> <p>explicitly (1) 96:3</p> <p>explore (1) 207:13</p> <p>exposed (1) 46:7</p> <p>expressing (1) 80:14</p> <p>extent (7) 74:20,25;75:12,19; 78:16;88:23;191:10</p> <p>extra (1) 206:23</p>	<p>117:21;121:17;122:6,8; 10:123;16;129:4; 131:17;136:15,17; 144:17;147:17</p> <p>Fang's (2) 93:12;102:9</p> <p>far (11) 30:13;53:4;59:6;64:5; 72:25;102:12;109:19; 174:18;204:19;210:19; 219:12</p> <p>faster (1) 137:21</p> <p>father (1) 208:5</p> <p>favor (1) 161:6</p> <p>favours (1) 160:22</p> <p>February (5) 187:9;193:25;194:2; 221:25;222:11</p> <p>feels (1) 189:15</p> <p>fees (5) 85:4,5,15;130:14; 140:10</p> <p>Feinman (2) 22:10,12</p> <p>felt (1) 211:22</p> <p>FEMALE (2) 134:11,15</p> <p>few (3) 25:19;69:10;141:24</p> <p>fight (1) 16:24</p> <p>fighting (1) 142:10</p> <p>fight (1) 218:14</p> <p>filed (1) 131:17</p> <p>files (2) 93:15,23</p> <p>filing (1) 19:25</p> <p>fill (1) 66:4</p> <p>final (2) 151:16,18</p> <p>finance (1) 171:11</p> <p>finances (1) 170:4</p> <p>financial (1) 206:18</p> <p>financing (1) 205:12</p> <p>find (13) 15:8;46:5,8;50:4;57:2; 63:14,19,22;76:22; 77:24;188:7,14;207:3</p>	<p>finding (1) 78:4</p> <p>fine (8) 83:17;84:23;132:15; 139:8;178:16;194:24; 200:2;207:7</p> <p>finish (8) 76:15,16;83:5;98:22; 106:7;127:16;147:12; 214:5</p> <p>finishes (6) 8:6;52:20;104:2,14; 111:15;113:22</p> <p>fire (1) 207:12</p> <p>firm (19) 14:15,23;15:21;17:21; 18:17;21:18;23:22,22; 35:17;61:7,7,24,25; 109:6;119:21;120:16; 18:200;18;201:17</p> <p>first (16) 6:4;41:23;68:16; 88:21;101:7;109:7,11, 14;152:8;157:3;181:20; 20:184;22;186:20; 209:24;211:7</p> <p>five (5) 134:9;189:5,6;205:23, 23</p> <p>fix (1) 39:23</p> <p>focus (2) 217:21;218:5</p> <p>follow (5) 35:2;146:12,24,24; 182:14</p> <p>followed (2) 199:23,25</p> <p>following (2) 134:4,18</p> <p>follows (2) 6:6;143:25</p> <p>foreclose (4) 158:14;187:3;212:13, 17</p> <p>foreclosed (3) 212:18,19;218:10</p> <p>foreclosure (1) 30:9</p> <p>foreseeing (1) 177:3</p> <p>forever (2) 142:7;171:20</p> <p>forgiven (1) 178:25</p> <p>form (35) 13:10;20:22;32:7; 38:10,21;45:25;57:23; 58:3;60:24;94:17;97:23; 100:12;102:6,16,21; 103:8;107:19;122:11; 123:23;152:20,21;155:9</p>	<p>23;156:5,14;157:14; 167:22;176:21,22; 179:21;203:3,14;204:8; 210:6;213:22</p> <p>former (1) 147:25</p> <p>forth (2) 85:11;124:16</p> <p>found (5) 67:8;153:11,14; 171:24;221:17</p> <p>foundation (4) 39:7;40:18;91:2;97:25</p> <p>four (2) 110:9;113:23</p> <p>frankly (2) 140:15;208:16</p> <p>free (1) 118:21</p> <p>fresh (1) 33:5</p> <p>friend (2) 158:13;217:3</p> <p>friends (2) 207:3,5</p> <p>front (2) 100:22;170:9</p> <p>frustrated (5) 49:7,10,20,21;50:17</p> <p>fulfill (1) 66:4</p> <p>full (1) 51:25</p> <p>fully (2) 96:16;141:12</p> <p>functioning (1) 53:25</p> <p>funds (1) 22:21</p> <p>funny (1) 218:16</p> <p>further (1) 134:18</p> <p>future (1) 177:3</p>	<p>general (21) 29:6,24;45:12,12,15; 109:6;114:2;146:12,21; 149:19,21;168:7; 169:17;174:23;175:6,7, 13;200:12,12;219:15; 221:11</p> <p>Generally (1) 95:15</p> <p>GENDER (363) 3:21;6:12,16;7:1,12, 19,23;8:1;9:1,8,12,24; 10:1;11:1,18,19,21,25; 12:1,4,18;13:1,8;14:1,6; 15:1;16:1;17:1,7,9,9; 18:1,18,24;19:1,13,14, 16,18,18;20:1,20,21;1,4, 6,9;22:1,2;23:1,24;1; 25:1;26:1;27:1;28:1,22; 29:1;30:1,25;31:1,23; 32:1;33:1,14,24;34:1,4, 8,9;35:1,6,8,12;36:1; 37:1,2,14;38:1;39:1,3,4, 21;40:1,14,15;41:1,17, 25;42:1;43:1;44:1;45:1, 10,17;46:1,12,14;47:1,5; 48:1;49:1;50:1;51:1; 52:1;53:1;54:1;55:1; 56:1;57:1;58:1,4;59:1; 60:1;61:1,8;62:1,15,25; 63:1;64:1;65:1,15;66:1; 67:1,5;68:1;69:1,5,16; 70:1;71:1;72:1;73:1,18; 74:1;75:1,23;76:1;77:1; 78:1;79:1;80:1;81:1; 82:1;83:1;84:1;85:1,10; 86:1,10;87:1,19,22;88:1, 12;89:1,20,24;90:1; 91:1;92:1;93:1;94:1; 95:1;96:1;97:1;98:1; 99:1;100:1;101:1;102:1; 103:1;104:1,13,19,20, 24;105:1,4;106:1,2; 107:1;108:1,9;109:1,7, 10;110:1,6;111:1,10; 112:1,10;113:1,20,22; 114:1,7,8,24;115:1,13; 116:1,3;117:1;118:1; 119:1;120:1,18;121:1; 122:1,5,9;123:1;124:1, 10,15;125:1,5;126:1; 127:1;128:1,5,12;129:1, 3;130:1;131:1;132:1,23; 133:1,2,5,19;134:1; 135:1,6,10;136:1,9,13, 23;137:1,14;138:1,14; 139:1,13,20;140:1,23; 141:1,17,21;142:1; 143:1;144:1,14;145:1; 146:1;147:1;148:1,2,13; 149:1;150:1;151:1; 152:1;153:1;154:1; 155:1;156:1;157:1;</p>
<p>F</p> <p>fact (12) 39:25;59:7;61:9; 65:13;66:3;114:6;151:4; 170:2,16;178:7;183:7,21</p> <p>facto (1) 119:9</p> <p>facts (3) 98:5;102:8;194:13</p> <p>factual (1) 118:18</p> <p>failed (2) 168:25;169:13</p> <p>fairness (1) 84:16</p> <p>false (1) 130:22</p> <p>familiar (1) 31:12</p> <p>family (11) 46:3,21;47:6,8;55:16; 60:4;69:16;139:13; 142:4;158:16;171:6</p> <p>Fang (60) 3:4;37:11;41:24; 43:17,18;47:5,5;50:7; 54:13;55:22;57:3,22; 58:9;64:12,16,19;65:6, 21;66:8,12,13,19;72:17, 19,24;73:8,11;96:8,9; 100:13;101:13,23;102:7, 8,12,16,19,22;105:2,7; 106:11;107:4;108:2,8; 111:11,12,18;114:23;</p>	<p>G</p> <p>gag (1) 87:12</p> <p>gain (2) 176:2,6</p> <p>gather (1) 84:22</p> <p>gave (15) 10:23;25:7;120:21,23; 121:21;123:16;139:22; 159:15,23;160:14,16,19; 162:3;196:6;219:15</p> <p>geared (1) 84:21</p> <p>Gener (1) 196:8</p>			

ORLY GINGER VS.
DALIA GINGER, et al

DALIA GINGER
December 13, 2012

158:1,16;159:1;160:1; 161:1,13;162:1;163:1, 13;164:1,12;165:1; 166:1;167:1;168:1; 169:1;170:1;171:1,5; 172:1;173:1,11,12,15; 174:1;175:1,6;176:1; 177:1;178:1;179:1,18; 180:1;181:1;182:1; 183:1;184:1;185:1; 186:1;187:1;188:1,25; 189:1,11,21;190:1; 191:1;192:1;193:1; 194:1;195:1,15;196:1,7; 197:1;198:1;199:1; 200:1;201:1;202:1; 203:1;204:1;205:1; 206:1;207:1;208:1; 209:1,20;210:1;211:1; 212:1,4,8;213:1;214:1; 215:1;216:1,23,23,25; 217:1,3;218:1;219:1; 220:1;221:1,9;222:1,10; 223:7,17 Genger's (6) 8:17;9:5;33:6;85:16; 144:15;164:17 gentlemen (2) 39:13;40:2 germane (4) 140:20,22,25;141:4 gets (1) 161:7 given (5) 160:13,17;161:16; 175:23;223:12 giving (5) 69:25;98:11;158:8; 194:18;217:24 God (2) 121:21;142:7 goes (1) 153:22 good (5) 76:13;113:15;114:18; 123:2;134:24 GP (5) 168:7,25;169:13,17,23 grammar (2) 156:15;157:15 Great (1) 96:11 GRIVER (422) 6:9;8:8,13,22;9:4,11; 10:6;13:19;16:10,13,14; 17:2,18;18:10;19:15,21; 20:2,8,12,25;21:16,25; 22:9,16;23:14;24:23; 25:12,26;11:28;18,21; 29:15;32:4,5,15,18,20; 25;33:2,6,13,19,23,25; 34:3;35:4;36:6,7,16,21; 37:9,13,22;38:11,25; 39:10,17,20;40:21,41,6; 14,22;42:5,11,18,22; 43:10;44:12;45:7,20; 46:11,19;47:20;48:19; 49:2,9,14,18;50:12,15; 51:6,10,12,16,24;52:10; 18,20,25;53:11,22;54:5; 11,17;55:2,6,8,14;56:9; 23;57:14,19;58:6,17; 59:9,15,23;60:11;61:3; 13,22;62:18;63:4,5,20; 64:11,15,24;65:12,19; 66:6,13,16,17;67:2,19; 68:4,8,12,25;69:3,9,14; 70:14,20,24;71:6,17; 72:5,15,23;73:9,16; 74:12,18;75:9,17;76:11; 15,18;77:4,8,16;78:9,14; 19;79:14,25;80:8,17; 81:14,25;82:4,10,12,21; 23;83:7,11,16,20;84:5,8; 86:5,9,13,16,21,22,25; 87:6,18;89:4,15;90:6,14; 21;91:2,4,14,15,17,21; 92:4,13,17;94:4,6,18; 96:7,14,23;97:4,5,19; 98:9,18;99:5;101:2,8,12; 21;102:3,20;103:9,12; 20;104:3,5,8,18;105:12; 18,25;106:19,23;107:24; 108:5,14,22;109:2,12; 13;110:2,5,19,21,23; 111:2,5,9,16;113:7,13; 18;114:13;115:16,17,18; 116:2,5,8,13;117:2; 118:12;119:7,25;120:8; 14,17;121:6,20;122:4; 14,19;123:9,20;124:7; 23;125:3,4,12,24; 126:19;127:5,9,14,17; 20,21;128:21;129:7,16; 130:15,19,25;131:6,15; 25;132:21,24;133:21; 135:2;136:7,10,11,12; 18,22,25;137:9,20,25; 138:12;139:3;140:16; 17;141:8,14;142:13; 143:6,11,18;144:12,13; 24;145:9;146:4,11,19; 147:2,11,24;148:18,22; 149:6,12,20;150:23; 151:15,20;153:4; 155:13;156:2,7,17; 157:2,5,10,19;159:10; 160:6;161:24;162:12,16; 24;163:2,7;165:7,13,18; 167:9;168:2,19;169:6; 170:20;171:3,14,18; 172:19;173:5,9,14; 175:5,10;176:19;177:6; 23;180:6;182:4,22; 183:5;187:25;188:5,24; 189:3,20;191:4,5,14; 192:23;193:4,11,15,17; 194:7,15,24;195:6,13, 17;196:3,10;198:17; 200:16;201:4,11,14; 202:24;203:4,18;204:5, 10,13,24;205:2;206:21; 208:10,18;209:12,18; 210:13;213:23;214:7; 216:24;217:5,13;219:11, 25;220:15;221:21,24; 222:4 Griver's (1) 115:20 ground (1) 138:17 grounds (2) 91:25;138:18 Group (2) 22:15;35:10 guess (16) 7:11;44:18;55:17; 80:24;99:17;125:19; 126:6,12;163:25;173:8; 183:15;185:24;188:12; 189:2;204:15;221:17 guessing (1) 126:16 guy (1) 17:23 guys (1) 142:11 H Half (8) 26:23;27:2;86:20; 116:6,11;169:25,25; 192:2 hand (8) 8:14;22:15;32:25; 112:18;126:19;127:3; 138:4;139:17 handing (1) 162:17 hanging (1) 105:11 happen (4) 137:22;171:12; 207:11;211:13 happened (2) 77:23;165:22 happening (2) 166:4;207:18 happy (4) 52:6,16;54:24;113:21 harassed (5) 49:23;53:19,23;54:7; 55:10 harassing (1) 33:17 Harassment (3) 53:13,14,15 hard (2) 34:25;219:9 harm (2) 115:6,12 harmful (2) 76:9,20 harmless (2) 74:24;78:11 Harris (11) 87:15;116:17;117:9, 15,17,20,24;118:3; 119:5;120:3;121:12 Harris' (2) 118:11,16 head (1) 18:12 hear (3) 111:8;191:6;218:19 heard (4) 107:16,17,25;216:2 held (1) 78:11 Hello (2) 134:7,22 help (2) 34:14;163:23 helpful (1) 142:14 hereby (1) 223:7 herein (1) 6:4 Here's (1) 40:11 Hey (2) 196:12;199:12 hid (1) 206:4 highest (2) 200:15,19 himself (1) 214:13 hire (1) 14:22 hired (3) 15:4;85:10;128:2 history (1) 63:11 Hoffman (1) 117:20 Hold (1) 134:15 holding (1) 127:2 holds (1) 74:24 home (1) 93:10 Honor (17) 134:25;135:15; 136:12,16;137:25; 138:12,13;139:3,9; 140:5,16,21;141:8,12, 13,14;142:13 Honor's (1) 141:15 hope (2) 111:4;131:2 hoping (1) 171:9 hospital (4) 50:18;52:6;53:3,6 hospitalized (2) 49:23;53:17 hour (6) 86:20;113:13;116:6, 12;191:25;192:2 hours (3) 27:3,5;139:18 house (1) 57:10 household (1) 170:4 housekeeping (1) 8:14 hundreds (1) 217:23 husband (12) 148:2;154:18;155:5; 168:10;169:25;170:3; 177:4;180:11;182:12; 205:12;207:17;208:20 Hypothetical (2) 146:7,10 I idea (8) 44:17;48:10,13;75:21; 111:22;114:15;123:2; 132:15 identified (2) 61:23;220:16 Identifies (1) 74:17 ignore (1) 33:20 imagine (2) 110:15;168:5 immediately (3) 88:22;121:4;208:7 implemented (2) 176:4;177:16 important (1) 123:4 impossible (1) 46:5 improper (1) 152:20 inactions (4) 37:3;104:25;105:7; 106:11 inadmissible (1) 138:9 Inc (2) 3:12;212:3 included (6)
--

ORLY GINGER VS.
DALIA GINGER, et al

DALIA GINGER
December 13, 2012

219:5;220:21,25; 221:8,11,12 includes (1) 81:3 including (2) 46:21;81:4 incomprehensible (2) 32:8;219:7 inconsistent (3) 180:22;181:5,11 incorrect (1) 118:20 increasing (2) 85:15,19 incumbent (1) 110:3 incurred (2) 23:6;81:5 incurring (1) 85:3 indeed (1) 12:21 indemnification (6) 79:18;80:22;81:3,10; 94:14;98:12 indemnifications (2) 123:17;125:7 indemnified (3) 78:11,21;79:6 indemnify (4) 78:24,25;79:3,4 independent (3) 28:24;61:7,25 indicate (1) 112:19 Indicating (1) 173:23 indication (1) 73:20 individual (12) 15:22;16:5,16,16,19; 18:2,24;20:16;22:18; 24:13,15,20 individually (1) 21:5 indulgence (1) 143:14 influence (1) 187:2 inform (2) 135:25;190:7 information (15) 29:13;99:15;100:11; 102:6,15;103:22; 106:15;123:3,4,13; 124:9,14;129:4;133:14; 166:10 informed (3) 123:14;161:10,12 inherent (1) 117:23 initiated (2) 17:6;35:7	initiative (1) 166:8 injury (1) 81:5 insist (1) 175:8 instead (4) 18:12;132:16;143:8; 205:8 Instruct (11) 16:7;33:16;36:16; 90:17,21;92:2;115:14; 137:3,17;162:19;208:25 instructed (6) 92:20;104:24;106:11; 126:22;138:19;162:18 instructing (3) 104:11;124:23;191:7 instructions (2) 142:14;182:14 instructs (1) 29:16 Instrument (3) 38:2;42:20,25 intend (2) 85:4;194:3 intended (4) 153:23;155:6,17; 158:17 intent (6) 148:9;164:8;166:25; 167:11,20;211:10 intention (3) 154:3;171:19;212:7 intentions (2) 163:23;188:18 interest (27) 12:22;20:19;21:5; 47:17,18;62:13;78:23; 87:23;129:2;144:15; 145:2;148:23;149:3; 175:14,15;181:21;199:9; 14,15,15,16,17,200:20; 205:16,17,17,18 interested (2) 62:24;140:3 interests (12) 12:11,12,15,18,19,22; 13:7,8;21:12,13;22:7; 175:14 interpleader (1) 22:14 interrogatories (2) 9:6,10 interrogatory (3) 11:11;27:12;185:9 interrupt (1) 82:11 interrupting (1) 82:12 interruption (1) 20:6 into (2)	155:4;195:14 investigate (4) 102:10,11;104:25; 105:6 investigated (1) 106:10 investigation (9) 62:4;76:2,22;77:3,12; 93:4,11;103:15;106:12 Investment (3) 3:12;212:3;218:24 invisible (1) 118:17 invite (2) 120:25;121:25 invited (2) 120:20,22 invoices (1) 21:17 involved (13) 31:18;34:5,10;35:14; 24;56:7,95:12;139:12; 162:8;203:7;204:19; 205:14;208:17 involvement (1) 122:7 involving (1) 139:20 irrelevant (3) 137:6,11;138:9 issue (3) 19:25;153:11,15 issues (4) 84:22;132:7;135:9; 139:20	judge (7) 82:10;97:17;131:12; 132:11;134:3,21,22 judge's (3) 132:10,10;216:8 judgment (3) 131:17;140:20;141:5 June (1) 7:9 Justice (5) 134:9,14;151:10,17; 173:25	10;20:9;30:20;70:6; 99:7;143:19;175:25; 181:4 later (5) 130:18;138:9;139:6; 165:25;171:23 laughing (1) 211:15 law (14) 14:15,23;15:21;21:18; 35:17;74:20,25;75:12; 20;78:17;88:24;96:21; 200:17;201:17 Lawrence (1) 221:10 lawsuit (5) 16:24;17:3,6;35:9; 36:6 lawsuits (16) 31:8,11,12,18,22; 33:24;34:4,7,9,19;35:5, 7,13;36:22,25;46:7 lawyer (59) 15:9,11,13,17,19;17:7, 22;25:2,31;15;43:16; 59:18;70:12,17;73:7,11, 25;74:4,5;77:11;89:6,10, 10,12;90:2,7,15;91:9,13, 22;93:21;95:19;97:16; 122:17,22;124:2;128:10, 11,13;129:14,18,22,24; 133:4;144:5,22;146:25; 165:23;166:16;190:7; 192:13;193:5;210:2,4,4, 8;214:2,3;217:11; 221:17 lawyers (8) 31:9;53:24;77:9,12; 136:7,19;165:21,24 lawyer's (2) 73:23,24 layperson (1) 114:2 Leah (104) 3:4;37:11;41:24;43:4; 45:16,22;46:22;47:5; 49:7,10,19,21;50:7,16, 19,20,24;51:18;52:11; 53:2,6,18;54:6,19,23; 55:9,19;57:3,22;58:9; 64:19;65:6;66:8,12,13, 19;67:22;69:25;72:11, 14,16,17,19,24;73:8,11, 15;74:17,19,24;75:11, 19,21;76:3,9,20;77:18, 25;78:2,4,6,10;88:2,6, 23;93:4,11;96:8,9; 98:11;100:13;101:13,14, 15,23;102:7,8,9,12,16, 19,22;105:2,7;106:11, 16;107:4;108:2,8; 111:11,12,17;114:23; 115:4,8;117:21;122:6;
				K
				keep (14) 17:5;34:19;35:15; 36:2,3,8,12,22,24;83:13; 104:12;145:5;171:20,23 keeping (1) 162:11 kidding (1) 191:24 kids (7) 154:23;157:23;158:6; 159:5;160:5;168:5; 175:17 Kilmerman (1) 221:10 kind (8) 29:12;30:20;52:4; 61:7;67:6;79:24;80:15; 118:25 knew (11) 45:15;121:16,18; 124:3,5;166:3,14;193:8, 8;206:17;207:15 knowing (1) 87:24 knowledge (7) 97:7;100:11;102:6,15; 103:22;172:24;183:10 known (3) 55:17;207:24,25 knows (2) 121:12;166:15 Kortmansky (8) 17:22;126:2,3,10; 127:22;128:2,4,15 Krause (1) 135:2
				L
				Lack (3) 39:7;40:18;97:25 Lance (5) 87:15;116:17;117:9, 15,20 language (1) 176:5 last (13) 9:16,23;10:7,9;11:4,
		J		
		Jaffe (3) 134:3,21,22 Jaffe's (1) 134:9 January (17) 11:25;13:22;37:6; 38:16,19,19;44:11; 62:16;68:20,21;88:16; 94:10;105:5;106:8; 125:16,17;209:15 job (11) 34:2;46:8;48:25;52:5; 62:11;123:21;126:25; 127:4,7;203:10;209:2 JOHN (3) 3:15;121:6;139:10 join (15) 16:9;19:19;32:10; 49:16;50:10;81:19; 85:20,24;121:23; 123:24;144:11;152:22; 167:6,204:12;209:8 Jonathan (4) 125:25;126:10; 127:22;136:14		

ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

123:16;129:4;131:17; 136:15;17;144:17; 147:16 Leah's (5) 38:7;42:23;53:25; 67:10,11 least (2) 156:15;219:14 leave (2) 82:19;138:7 led (1) 61:9 left (5) 61:12;96:8;117:3; 211:23;214:16 legal (12) 50:11;79:13;80:15; 85:3,5;114:2;130:14; 139:21;171:25;188:14; 194:12;196:25 legally (4) 159:8,13;172:17; 195:23 LEINBACH (30) 96:19;112:8,21;113:7; 115:23;119:8,14,19; 121:9,19;132:5,19; 133:3,8,12,16;134:7,8, 12,17,24,25;135:5,17,22, 25;162:16;189:18; 195:3;216:7 lent (1) 24:2 letter (6) 57:20;94:14;162:14; 163:12;165:9,15 letting (3) 197:9,19;198:4 liability (1) 129:5 life (2) 47:19;160:4 lifetime (1) 12:4 limit (2) 98:23;137:17 limited (5) 108:6,7;210:25; 216:11;218:25 line (12) 35:19;75:5;86:2;90:5; 97:11;103:11;130:6; 137:6,9;143:25;144:2; 169:10 list (2) 36:2,3 listen (3) 39:17;201:15;216:25 litigation (4) 117:18;137:7,11; 142:5 LLP (1) 3:11	loan (2) 23:21;24:4 loans (3) 23:2,5,17 location (1) 44:6 logic (1) 174:22 long (8) 26:16;103:18;110:7; 114:5;126:21;191:22; 192:8;219:14 look (39) 9:23;10:13,18,24,25; 11:4;28:17,23;35:20; 37:16;63:25;64:6,68:13, 16;69:21;75:5;81:2; 88:9;93:14,14;94:7; 96:7;98:19;99:7;100:3, 15;105:19;116:3; 131:16;174:3;177:12; 178:13;181:3;184:24; 185:9;192:3;201:2,7; 218:21 looked (4) 31:9;64:19;93:23; 169:24 looking (8) 9:12;28:19,23;67:20; 106:5;108:15;163:8; 194:9 looks (1) 108:21 lot (2) 61:11;182:15 LP (18) 30:10;148:13,21,24, 25;149:21;183:8;184:8; 209:14;212:18,20;219:4, 10;220:11,18,20;221:13, 14 ludicrous (1) 103:6 lunch (5) 113:14,21;114:11; 116:6;119:23	34:4,6,9,15,18,22;35:2,5, 5,7,11,13;46:7;80:13; 112:10;142:6,6;152:25; 166:12;199:19;203:20; 204:7;211:21;216:18; 218:13,13;219:13 March (7) 11:8;173:19;176:7,13; 177:17,25;193:24 Marisa (1) 135:14 marital (12) 151:9;152:9;156:4,11; 157:11;169:24;170:11; 173:24;193:7;197:5; 205:22;206:24 Mark (4) 55:6;108:5,22;168:16 marked (46) 8:21;9:3,10;11:2; 28:20;37:9,12,15;42:18, 21,23,25;43:5;68:4,7,8, 11;80:21;92:14,16,19, 21,25;94:7,20,24;95:17; 97:9,22;98:20;108:13; 110:9;111:24;149:6,11; 151:15,19;162:13,15; 168:18;173:10,13; 185:11;188:16;209:13, 17 married (1) 207:17 Masyr (2) 3:22;136:20 matter (8) 8:24;75:8;139:17; 140:12;146:12;159:13; 181:18,20 matters (7) 8:14;85:10;99:15; 139:14,15,19;141:23 maximize (1) 201:18 maximum (9) 74:20,25;75:11,19; 78:16;88:23;98:11; 123:16,23 may (23) 21:12,23;28:10;36:5; 40:7,7;58:5;78:12,12; 82:24;85:17;102:9; 104:8;113:5,23;119:16; 125:8;126:24;130:10; 143:20;166:16;185:21; 186:9 Maybe (5) 14:20;19:22;61:6,24; 112:5 mean (45) 13:18;17:8,11;26:6; 29:6;31:8,10;35:3,25; 47:2;58:23;77:23;81:11; 98:23;100:8;112:5;	123:7;130:3;138:22; 142:24;144:8;150:12; 153:3;154:18;159:13; 162:11;164:5;168:6; 169:23;171:24;174:21, 23;177:22;181:9,19; 183:16,16;184:5; 188:20;191:10;195:24; 196:2;213:9;219:13,17 meaning (1) 167:13 means (8) 18:7;78:25;79:2,3,5; 99:8;159:5;184:6 meant (1) 79:18 mechanism (1) 155:7 meet (2) 26:13,16 meeting (3) 209:14,17;218:21 MEISTER (272) 8:6;9:25;13:12;14:2,6, 22;15:4,5,8,21;16:4,6, 12,15,18,22;17:25; 18:16,23;19:21,23;20:3; 21:18,23;22:2,11,14; 23:7,24;11,12,17;25:5,9, 16;26:5,9,13,17;27:7,15, 19;28:7,15,25;29:16; 30:7,15;31:14,17;32:2,7, 12,17,19,24;33:4,10,16, 25;36:5,9,14;37:18; 39:14;45:25;49:11,17; 50:9,11;51:19,22;52:17, 23;57:4;60:15,19,24; 63:3;66:12;68:22;69:2; 70:3;71:16;75:6;76:13; 78:16;81:12,16;82:20; 83:2;84:2,11;85:21; 86:11,14,18,24;87:7,10; 88:25;89:8,13;90:17,25; 91:11,25;94:17;99:3,24; 100:23;101:6,8,19,25; 102:18,23;103:2,7,19, 25;104:5,10;105:24; 106:17;107:19,22; 109:11,23;110:17,21,24; 111:3,7,14;112:7,9,13, 16;113:11;114:11; 115:13,17,19;119:16,20; 120:15;123:5,18,24; 124:18,21;125:2,8,23; 126:13,16;127:4,7,12, 15,19;128:2,16;135:14, 14;138:13,14,16,23; 139:5;142:16,25;145:3; 146:7,14,17;147:10,18; 148:15,20;149:16; 150:21;152:19;155:9,22, 24;156:14,22;157:14; 158:18;159:25;161:20;	162:17,23,25;165:3,11, 16;166:20,24;169:4; 170:15,22;172:15; 173:3;174:25;175:8; 176:22;177:19;180:2; 182:2;185:20;188:11,13, 22;189:6;190:22;191:4, 7;192:9,21;193:11,16, 23;194:9,20,25;195:5,9, 19;196:11,17;197:4,8, 18;198:2,14;200:8,10, 17,21;201:6,9,16,22; 202:5,12,19,20;203:3,6, 12,21;204:3,12,22; 208:6,21,25;209:8; 210:5;213:22;214:5; 215:17;216:5,16,21; 219:6,24;220:8,12;222:3 Meister's (3) 20:14;35:17;191:8 member (1) 69:16 memo (4) 80:20;91:5;94:10; 108:12 memoranda (1) 196:3 memory (2) 109:18;195:16 men's (1) 87:11 mental (3) 7:17;8:3,9 mention (6) 130:8;131:21;220:24; 221:3,15,18 mentioned (6) 49:25;50:17,18; 139:24;220:19;221:4 merely (1) 194:12 messages (1) 56:25 met (4) 15:5;26:5,6,14 middle (2) 104:11;192:23 midnight (1) 44:18 might (24) 27:10;28:2;54:18; 60:13;61:7,8;62:24; 109:21;110:12;124:3; 127:24;131:16;151:2,2; 161:4;171:24;186:13,14, 20;187:7,13;189:12; 197:7;207:4 million (7) 150:13;164:5,11; 175:18;205:3,5,20 millions (2) 217:22,23 Milonis (3)
---	---	--	---	---

ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

151:10,17;173:25 mind (3) 20:14;49:12;62:13 minds (1) 158:20 minimum (2) 123:3;140:23 minute (4) 14:20;20:4;37:16; 137:8 minutes (8) 81:22;84:19;113:12; 116:13;134:9;143:12; 189:5,6 Mischaracterizes (2) 179:22;182:20 misrepresentation (2) 85:6,15 Missry (1) 3:22 mistake (3) 189:12,14,15 moment (4) 19:24;36:14;119:18; 193:11 Monday (1) 25:22 money (17) 23:25;118:23;142:11; 163:25;169:19;172:10; 196:25;197:15,16; 205:15,21;206:4,20,23, 24;207:7,9 month (1) 34:20 moot (1) 96:17 more (5) 59:16;86:15;116:11; 150:9;207:9 Moreover (1) 117:19 morning (1) 44:15 MORRIS (1) 3:11 most (3) 78:5;197:15,16 mother (6) 47:19;55:21;180:24; 181:7,7,12 motion (4) 96:12;131:16;140:20; 141:5 motions (2) 118:23;138:10 motivation (1) 163:24 mouth (3) 104:12;121:21;208:9 Move (8) 51:22;81:16;85:17; 110:17,23;113:9;137:21,	24 moved (2) 96:9;111:5 much (6) 23:25;98:24;174:4,14; 207:7,16 multiple (1) 142:2 must (2) 29:17;40:8 myself (1) 133:20 N name (11) 6:10;15:10;17:20,21, 23;23:22;65:4;74:3; 117:7,11;221:16 namely (1) 177:4 names (1) 221:3 natural (1) 153:3 near (1) 90:11 necessarily (1) 140:8 necessary (3) 137:15;221:15,17 need (8) 37:16;45:18;66:4; 81:21;84:17;87:10; 116:11;188:25 needed (3) 93:21;161:19;211:5 needs (1) 47:18 negative (2) 156:16;215:18 neither (2) 154:14,19 nervous (2) 36:20;53:9 New (12) 3:6,6,14,14;6:5;113:4; 133:12,16;177:9;178:8, 23;223:24 next (5) 40:11;51:22;81:17; 98:23;181:4 night (1) 44:15 nodding (1) 18:12 nominated (2) 42:10,13 nomination (1) 46:9 nonaction (3) 30:4,8,11 nonactions (2)	30:5,6 None (2) 79:20;84:19 nonspeaking (1) 137:18 nor (2) 118:15;194:11 normal (1) 161:6 Notary (4) 6:5;43:17;44:2;223:24 Note (145) 13:9;17:16;20:21; 30:10;51:21;52:8;58:4; 71:24;87:6,10;90:4; 96:9;97:10;99:23; 106:20;108:10;117:2, 13;118:13;120:24; 121:24;123:22;135:18; 142:16;149:8,10,18; 150:3,6,12,14,15,24; 151:5,13,22;152:4,6; 153:7,9,17,23;154:12, 15,20,21,21;155:5,6,15, 18;156:12,25;157:13,21, 24,25;158:2,3,4,7,9,10, 10,12,15,17;159:5,8,9,9, 21,24;160:5,10,10,13,15, 17,17,23;161:16;162:3, 7;163:10,23;164:2; 167:2,14,17,21;168:6; 169:5;170:13,18,24,24; 171:2,4,11,12,20;172:3, 4,7,7,11;173:2,6;174:21; 177:5,22,25;178:10,17, 20,21;179:12,17;180:13, 14,19;181:9;182:23; 183:6,13,15,18,20; 185:11;187:3,23;195:23, 24;210:24;212:14,17,19, 22;213:5,8;218:18,22, 25;219:4 noted (5) 50:12;92:6;103:7,12; 108:23 notes (3) 168:24;169:14;172:24 notice (24) 84:18;96:6;113:12; 120:21,23;121:7; 139:16;168:20,24; 184:17,19,25;185:3,11, 11,13,20;186:2,8,9,12, 17;190:6;198:6 noticed (4) 82:7;85:2,12;86:4 notify (3) 165:20;198:7,8 notifying (1) 30:9 notion (1) 150:7 notorious (2)	119:15,17 November (3) 108:2,9;163:10 number (7) 100:25;130:7,8; 136:25;185:9;210:22,23 numbered (1) 100:24 O oath (8) 9:20;32:4;87:20; 99:10;102:5,14;176:8; 223:9 object (33) 36:17;38:10,21;49:16; 51:2;57:23;58:3;60:24; 68:22;91:25;97:23; 103:10;104:8;113:3,7; 122:11;130:5;141:20; 152:21;155:23;156:5, 14;167:22;175:9; 176:21,22;179:21,23; 203:3,14;204:8;210:6; 219:7 objected (3) 121:4;122:2;160:9 objecting (4) 32:7;40:2,3;104:11 objection (210) 13:9,13;16:6,9;17:16; 20:21;21:15;24:22;32:2, 11;33:11,16;39:6;40:17; 41:5,11,19;42:2,14;43:7; 44:9;45:3,13,24,25; 46:18;47:13;48:16,22; 49:5,11,13;50:9,10,12; 51:21;52:8;53:7,21; 54:4,9,14,21;55:11;56:5, 12,19;57:4,6,13,16,24; 58:10;59:4,12,20;60:6, 23;61:2;62:17;63:2,16; 64:7,14,21;65:11,16,24; 66:11,22;67:16,25;69:8, 11;70:10,18;71:15,24; 72:12,22;73:5,12;74:11, 15;75:14;76:5,24;77:7, 13;78:8,13,18;79:7,10, 21;80:4,11,14;81:12,13; 83:25;84:2;88:25;89:8; 90:4,8,17;91:11;94:17; 95:22;97:10,13,24;98:2, 13,14;99:3;103:5,7; 105:8;106:20;107:19; 110:17,25;118:2,8,14; 119:8;121:24;122:12; 123:5,6,8,10,18,22; 124:18;127:8,16,19; 128:16;131:14;137:23, 24;139:24;144:10,18; 145:3,5;146:3,7,8,14,22; 147:18,21;148:15;	150:21;152:19;155:9, 22;156:6,22;157:14; 158:18,21,23;159:25; 161:20;162:25;163:3; 165:3,11,16;167:4,23; 170:15,22;172:15; 176:17,18;177:19; 179:15,19;182:2,19,21, 24;183:4;191:6;198:14; 200:10;203:12,17,21,23; 204:9,12;206:14;208:6; 209:4,8;210:5,10; 213:21,22;215:17,20; 217:8,9 objections (6) 40:4,9;17:11;18:5; 137:18;138:17;216:8 objective (1) 205:10 obligation (4) 6:20;178:24;179:14; 180:19 obtain (1) 133:13 obvious (1) 154:14 Obviously (22) 12:13;13:15,16;38:15; 42:10;43:14;46:4;62:2; 112:22;124:3,5;154:4, 10;166:3;170:25; 172:17;181:8,19;190:11, 21;202:13;218:3 occur (4) 208:2,3,5,21 occurred (2) 132:8;208:23 October (1) 168:8 Off (8) 20:2;131:25;132:3; 135:7;189:13;192:21; 204:22;221:21 officially (1) 88:14 Old (2) 3:5;7:10 once (5) 85:4;120:7;134:8; 154:17;190:5 one (36) 10:15;17:21;22:15; 25:8;36:20;47:3;59:16; 70:2;71:20;72:4;83:4, 19,22;113:5,5,6,8;124:5; 130:25;134:15;139:11, 22;141:9,12;158:11,16; 170:5;171:25;172:2; 177:5;178:9;195:4,4; 203:19;204:6;210:2 one-half (2) 153:6,9 only (10)
--	---	--	---	--

ORLY GINGER VS.
DALIA GINGER, et al

DALIA GINGER
December 13, 2012

7:5;30:11;35:9;47:22; 61:12;83:18;113:5; 140:5;180:11;200:7 open (3) 83:21;119:14,16 opening (2) 48:24;49:3 operation (2) 49:12;158:19 operative (1) 86:6 opinion (1) 124:2 opportunity (1) 189:17 opposing (1) 84:16 option (5) 61:24;195:20;197:22, 25;201:21 options (7) 61:9,21;191:9,16; 195:7,18;214:2 Orchard (1) 3:5 order (9) 6:22;24:6;30:20;46:9; 62:6;67:14;87:12;91:23; 150:10 original (1) 175:21 originally (1) 171:9 Orly (160) 7:12,19,22,23;11:19, 21,25;12:4,18;13:8; 14:6;16:24;17:7;18:17; 19:16,18;20:19;21:4,6,9; 23:18;29:6;30:9,21,25, 25;34:8,9;35:8,12,24; 36:23;39:3,4;40:14,15, 23;41:4,7,17,25;45:10, 17;46:9,14;47:10,11,12, 15,23;49:24;50:5,7; 54:18,24;55:24,25; 56:11;57:2,21;58:4,9; 60:4;61:8,10;62:15,25; 65:15,23;66:5,10,21; 67:22;69:5;71:9;75:23; 76:10,20;77:5;85:16; 87:22;88:3,12;89:17,20, 24;95:13;104:20,24; 105:4;107:5,10;108:9; 111:23;114:8;115:6,12; 120:18;122:9,18;124:2, 10,14;128:4,12;129:3,3; 135:5;144:14,15;148:7, 9,12;149:3;154:15; 155:5,8;159:21,21; 160:9;161:15;162:6,10; 163:24;164:12,13,17,25; 165:20;171:6;177:8; 178:7;180:15,24;181:8,	14,16,25;183:12;186:16; 190:7;197:9,19;198:6; 199:8,205:8,11;207:19, 20,21,24;208:4,22,22; 209:20;212:4,8,20; 217:20,22 Orly's (30) 53:24;54:12;56:3,7; 57:10;62:13;77:9,11; 85:6,9;120:19;136:19; 174:22;181:21;182:16, 18;199:15,16;204:19; 205:4,5,16,19;211:12, 13;212:11;213:6; 214:13;218:15;219:10 otherwise (3) 19:14;21:7;122:17 out (15) 23:2,5;39:22;57:2; 75:6;76:23;78:4;86:24; 104:6;112:18;127:8; 162:17;180:17;182:16, 18 outrageous (1) 163:20 over (14) 25:8;26:7;28:2;30:2,5; 36:18;68:25;85:4; 127:19;141:25;205:19; 216:14,14,14 Overall (1) 29:5 owe (3) 163:25;164:11;172:10 own (4) 12:19;166:8;171:10; 184:7 owners (1) 22:7 ownership (3) 150:11,11,16 owns (3) 30:21,25;31:2 P page (21) 9:16,23;11:4,4;99:7; 100:5,7,22,23,25;109:3; 110:6;143:25;144:2; 149:14,15,16;151:22; 169:10;173:16;185:8 pages (6) 109:8,11,14;110:9; 193:19,20 paid (18) 21:21;22:2,8;24:5,8; 46:7;62:2;154:21,22; 159:9,11,14;169:24,25; 170:25;172:18;205:11, 20 paper (6) 18:21;19:4,6,8;26:8;	42:16 papers (1) 97:17 paragraph (20) 100:3,10,17;101:4,9; 102:4,19;105:19; 106:17;116:4,9;131:4,9; 175:25;177:12,14; 180:8;219:5;220:17; 221:5 paragraphs (5) 140:22;152:3;174:5,7, 8 pardon (1) 193:16 parents (3) 153:25;154:11;159:6 Parnes (12) 152:15;159:15,24; 160:12;161:13,15,25; 163:9;171:20;172:12, 25;173:6 Parnes' (1) 164:13 part (15) 55:16;81:5,6;93:24; 96:14;151:6,25;153:18; 168:20,24;171:10;206:5, 24;220:22;221:13 partially (1) 183:15 participant (1) 202:10 participate (7) 188:19;199:22;201:7; 202:14;203:8;206:9; 207:4 participated (2) 200:2;207:6 participating (1) 202:15 particular (3) 151:25;157:18;166:14 particularly (1) 204:18 parties (13) 134:12;140:8;153:23; 155:17;164:8;167:2,12, 13,15;220:19,20;221:24; 222:9 partner (7) 17:22;149:19,21; 168:7;169:17;210:25; 219:2 partners (3) 209:14;220:10;221:14 partnership (3) 108:7,7;220:18 party (9) 113:6;133:2,3,17; 139:22;140:7;178:24; 179:14;219:17 passed (1)	141:24 past (4) 141:19,22;171:22; 189:12 Patricia (6) 64:25;65:3,7,14;69:6, 15 PAUL (2) 3:3;136:15 paul@zilberfeinlawcom (1) 3:8 pay (28) 22:21,23;23:2,5,17; 39:16;40:6;79:4;152:2; 154:15,20;157:23; 158:7;159:5;160:11; 164:11;168:5;170:5,6; 171:2,11;172:6,7;177:5; 181:9;205:3,4,23 paying (10) 21:17,20;22:17,19; 139:21;142:11;154:11; 170:3;175:17;205:8 payments (3) 168:25;169:13,20 peanuts (1) 217:24 Pedowitz (2) 21:18;22:13 pending (5) 37:18;82:17;96:13; 140:6;175:2 penny (2) 21:21,22 people (20) 115:3,10,11;182:13; 197:14,20;198:21; 199:19,22;200:7,13; 201:7,13;202:15,17; 203:7,9,20;204:7;219:22 people's (1) 158:20 percent (1) 85:25 perfect (1) 22:6 Period (5) 139:25;146:16; 153:19;180:24;193:25 permissible (5) 74:20,25;75:12,19; 88:23 permission (1) 215:4 permit (3) 119:5;214:24,24 permitted (2) 78:17;214:22 person (7) 46:6;52:4,6;61:12; 83:19;161:12;180:11 personal (2) 175:14;218:13	personally (6) 133:20,22,24;172:9; 176:2;207:16 persons (2) 220:16;221:9 philosophy (1) 175:16 phone (7) 55:24;56:17;62:23; 63:6;131:12;134:23; 142:18 physical (5) 7:18;8:3,10;18:20; 19:3 Physically (2) 43:24,25 pick (4) 55:24;56:17;62:23; 63:6 piece (2) 18:20;19:3 pieces (2) 19:6,8 place (4) 137:23;139:24; 187:22;215:23 places (1) 162:20 placing (1) 138:4 plaintiff (2) 119:24;136:8 plaintiff's (2) 9:6,9 plan (8) 148:4;150:18;176:3, 10,16;177:10,16;178:5 planning (8) 113:14;150:17; 153:18;154:2;171:6; 177:2,21;213:14 please (62) 6:11,23;23:8;27:6,18; 28:14;29:4;33:5,21; 36:15,20;42:6;51:7,13, 23;52:19;55:3;60:16; 61:4;67:3;69:21;70:25; 82:22;83:9;90:9;94:5; 98:19;100:4;101:8,20, 22;105:13,19;108:22; 115:14;122:3;131:7,20; 137:19;143:19;156:8; 171:15;174:3;175:11; 180:3;184:14;187:18; 188:2,23;196:13; 200:21;201:15;202:21; 208:11;209:24;214:5, 10;216:16,22,25;221:20; 222:3 pleased (1) 54:19 pledge (3) 149:8,10;150:3
---	---	--	--	---

ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

pm (12) 87:14,14;108:23; 116:15,16;133:25; 142:19;189:8,8;221:23, 23;222:8	118:8 presume (1) 198:6 pretty (1) 96:2 prevent (9) 7:18;8:3,10;33:21; 137:13;177:8;188:7; 196:23;213:12 prevented (1) 177:11 prevents (1) 96:20 previous (3) 92:19;132:8;144:17 Previously (4) 60:2;63:3;71:7;154:22 price (9) 198:11;199:17; 200:15,19;201:19; 203:11,19;204:6;209:2 prior (3) 58:19,20;186:8 privilege (7) 16:7;92:2;124:22; 138:18;191:11;194:4,19 privileged (6) 29:13;138:25;191:13; 194:3,8,16 probably (10) 25:15;26:2,19;31:15; 43:16;134:8;144:22; 145:20,23,25 problem (18) 7:18;8:3,10;45:15; 46:4,22;48:7,7;50:2,3,4, 19;60:9;67:7;157:22; 158:3,6;220:5 problems (1) 182:15 procedure (3) 6:25;199:23,24 procedures (1) 7:2 proceed (4) 58:5;122:3;214:22; 217:7 proceeding (6) 95:13;97:12;117:22; 130:11,13;151:17 proceedings (8) 87:17;116:19;117:22; 134:4,19;142:22; 150:25;151:7 process (1) 98:17 produce (4) 193:12;194:5,6,23 promise (2) 217:25;218:12 promised (2) 158:14;159:20 promissory (7)	149:7,9,18;150:2,6,14; 167:17 proper (1) 86:2 properly (1) 86:4 protect (5) 12:8;21:9;88:3; 181:24;182:6 protecting (1) 176:3 provide (7) 122:9;123:2;129:3; 144:17,20;147:16; 190:24 provided (4) 19:17;43:13;110:4; 166:10 providing (4) 22:20;93:16,19,24 provision (2) 118:24;119:5 Public (3) 6:5;43:17;223:24 purported (2) 91:5;122:7 purports (1) 74:10 purpose (3) 29:23;150:6;175:21 pursuant (1) 216:8 pursuing (1) 212:7 put (30) 12:10,17,21;13:7; 27:18;32:13;33:5;52:17; 81:21;83:16;84:15,17; 110:24;112:18;117:5,11, 16;119:13;120:6;121:7; 126:19;127:10,10,12; 131:5;141:2;143:21; 174:23;175:13;190:3 puts (1) 83:14 putting (8) 82:2,4,6;83:2,5;84:14; 177:8;196:9	96:21;141:16;197:25 raising (1) 28:15 rather (1) 130:21 react (2) 161:8,9 reacted (3) 161:5,16;164:6 reaction (2) 19:21,23 read (71) 11:12;20:9,10;23:7,9; 25:15;31:11;32:21,22; 33:6,8;42:7;51:8,12,14; 55:2,4;58:13,15;60:16, 20,21;61:18;70:25;71:2; 82:14,21;86:6,9,9;19; 101:7,9;102:8;105:13, 14;108:20;109:7,24; 110:9;114:2,4;129:7,9; 130:7;131:2,3,6,18; 143:19,23;156:17,20; 157:5;158:25;171:15, 16;174:4,14,19;180:3,4; 188:3;200:21,22;202:21, 25;208:10,12;210:12,14; 222:14;223:8 reading (8) 11:15;101:16;109:14; 155:24;169:5,5;174:18; 182:3 really (33) 13:25;31:5,9,11; 34:25;35:3;40:6;53:17; 58:2;62:20;72:4;76:7; 91:8;103:4,18;114:4; 126:4,7;127:24;128:6, 25;130:11;150:7,8; 152:6;159:12;163:5; 164:10;166:23;169:9; 183:16;196:24;210:8 reappears (1) 118:6 re-ask (1) 21:2 reason (8) 47:22,25;114:18,18, 20;140:18;159:23;166:6 reasonable (1) 189:19 reasons (2) 137:2;139:11 recall (18) 23:23;59:10;60:4; 66:18;67:4,20;71:10; 109:15,19,21,22;111:10; 151:4,12;152:17;153:5; 166:22;209:22 receive (5) 97:21;184:25;185:3, 10;186:7 received (5)	111:23;150:13; 185:20;186:21;187:7 receiving (4) 185:12,25;186:8,11 recess (4) 20:4;87:13;189:7; 221:22 recessed (1) 116:15 recision (3) 164:13,17;165:2 recognize (3) 37:14;69:22;150:2 recognized (1) 22:7 recollection (9) 28:24;29:3,9;43:20; 107:13;108:16;109:8; 110:10;163:9 recommend (1) 85:16 recommended (1) 15:9 record (97) 6:11;14:5;17:25;20:2, 8,10;21:24;23:9;27:18; 28:18;32:22;33:8;39:15, 16;40:4,5;42:7;51:8,14; 52:18;55:4;58:4,15; 60:21;61:18;62:22;71:2; 81:21;82:3,5,7;83:3,6, 14,17,21;84:14,16,17; 87:3,19;105:14;108:10; 110:25;112:8,22;113:4, 8;115:14;117:4,6,12,16, 18;118:13,19;119:13; 120:7,25;121:10,24; 127:8;129:9;132:2,4,18, 20;137:23;139:7,25; 141:3;142:16;143:3,5, 23;149:7;156:20; 158:25;171:16;173:10; 179:22;180:4;182:20; 188:3;189:9,17;190:4; 192:21;196:9;200:22; 202:25;204:22;208:12; 209:13;221:21;223:11, 12 recorded (1) 102:11 recreate (2) 178:23;179:13 redact (1) 140:2 redacted (1) 138:9 reduced (1) 34:20 Referring (3) 25:9;26:9;124:15 reflect (2) 28:18;112:9 reflecting (1)
		Q		
		quiet (1) 127:2 quite (1) 140:15 quote (4) 74:24;100:9;153:17, 20		
		R		
		raised (6) 27:9;28:11;30:8;		

ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

193:13 reflects (1) 194:13 reformation (1) 17:12 Refrain (5) 210:24;212:22; 218:17,24;219:3 refresh (5) 43:20;108:16;109:8; 110:10;163:9 refreshes (1) 109:17 regard (4) 201:23;202:2,6,8 Regarding (6) 23:18;66:8;97:11; 125:7;195:19;196:6 regular (3) 62:3;168:25;169:13 reimbursement (1) 85:5 reiterating (1) 94:13 relate (1) 140:8 related (9) 70:22;84:20;85:8; 96:3;130:6;139:19; 178:23;179:13;196:4 relates (2) 139:15;140:6 relationship (2) 127:25;128:3 release (23) 68:6;69:25;74:17; 75:19;79:24;80:3;88:22; 98:11;124:4;130:8; 131:22;139:22;219:16; 18,19,20,22,23;220:2,4, 7,21;221:11 released (3) 80:24;129:4;221:6 releases (11) 74:19,23;96:10;122:8, 10;123:16;124:9,16; 144:16,21;147:16 releasing (1) 75:11 relevance (2) 87:4;130:13 relevant (10) 81:23;82:9;84:22; 85:18;123:12,15,18,21; 124:9;131:9 rely (1) 145:24 remarks (2) 39:13;40:3 remember (148) 9:21;10:4,12;13:25; 14:14,17,21,24,25; 15:10,13,18,16,2;17:20,	21,23;25:17,23;26:2,5,6, 7;27:15,17;28:15;30:13; 31:6;35:10;38:23;39:24; 40:25;41:21;43:9;44:6, 14,16,20;47:9;57:18; 59:6,22,24;64:23;65:4, 20;66:2,7,24;67:18,23; 68:3;71:20;72:4;74:2,3; 75:24;76:7;77:15,17; 78:3;88:8;92:12;93:6,7, 8,17,19;94:2,2,19,22; 95:4,7,14;97:15;100:16; 102:12;103:14;105:3, 17;106:13;107:7,12; 108:4;111:13,13,17,20; 114:16;122:21;124:20; 125:11,22;126:4,7,14; 127:25;128:6,7,8,9,10, 22,25;129:23,25;130:2; 144:4,6,7;147:4,8,23; 151:2,14;152:24; 162:10;163:17;164:19, 24;166:23;178:11,19; 184:21,23,24;185:5,12, 15,16,25;186:4,10,11, 13;187:16,17;188:9; 189:25;192:11,12,13; 195:11;196:14;197:10; 201:20;203:9;209:10 remembers (1) 10:2 remind (1) 162:17 remove (1) 40:24 removed (1) 95:14 rendered (2) 22:4;194:12 repeat (17) 11:20;39:23;42:4,5; 50:13;61:3,13;66:14; 89:21;92:23;94:25; 96:23;97:4;151:8; 158:24;167:8;187:25 repeatedly (1) 126:22 rephrase (1) 201:15 reporter (34) 20:11;23:10;32:23; 33:9;36:19;42:8;51:9, 15;52:23;55:5;58:16; 60:22;61:19;71:3;83:18, 24;105:15;117:9; 119:19,22;129:10; 132:17;135:11,19,22; 143:24;156:21;159:2; 171:17;180:5;188:4; 200:23;203:2;208:13 represent (5) 14:23;15:25;133:23; 135:4,5	representation (1) 130:5 representative (2) 19:15;96:8 represented (3) 117:21;190:13,15 representing (10) 16:15,19;17:19;18:2; 21:4;22:3;24:12,13; 133:19,21 requested (23) 20:11;23:10;32:23; 33:9;42:8;51:9,15;55:5; 58:16;60:22;61:19;71:3; 105:15;129:10;143:24; 156:21;159:2;171:17; 180:5;188:4;200:23; 203:2;208:13 requests (1) 19:20 required (10) 122:16,22,23;129:14, 15;144:21,23;145:11,13, 15 requires (1) 158:19 rescinded (1) 161:25 rescinding (1) 166:11 resent (1) 130:11 reserve (1) 140:10 reserved (1) 222:13 resign (5) 45:16;49:8;50:21; 51:18;85:11 resignation (2) 38:2;42:24 resolve (2) 46:23;50:2 resources (8) 34:20;62:12;154:15, 20;157:23;188:20; 202:14,18 responded (1) 185:12 response (1) 102:4 responses (3) 9:6,9;11:11 responsibilities (6) 29:24,25;180:23; 181:6;201:23;202:6 responsibility (10) 13:15;45:6;198:19,20, 24,25;199:21;200:7,18; 201:18 responsible (1) 13:17 rest (3)	33:20;109:24;130:22 restated (2) 108:6,18 restrain (1) 214:13 result (5) 160:21;171:5;180:22; 181:5,11 results (1) 93:11 resumed (1) 142:22 retained (4) 14:9,13;15:24;16:5 retransfer (1) 153:24 return (2) 180:13;218:17 returned (10) 163:10;170:14,21; 172:25;173:6;177:25; 178:20,21;179:13,17 returning (2) 171:4;180:14 reveal (1) 89:13 review (3) 35:17,19;67:13 reviewing (1) 113:22 rich (1) 142:11 rid (5) 157:24;158:8;159:8; 163:23;174:21 ridiculous (1) 112:25 right (78) 9:21;11:9;12:3;17:11; 23:18;28:9;37:8;39:24; 40:6;43:3;55:23;56:11, 14,18;81:7;86:7,25; 88:18,20;91:7;94:16; 96:23;100:21;101:16; 104:10;110:13;112:6; 118:12;119:12,25; 121:17;125:17;126:3; 130:2;131:25;134:13, 14;135:3,3,7;136:10; 140:10;141:4;144:7; 148:6,8,17;149:23,25; 150:20;151:11;159:16; 163:16;167:18;168:23; 169:11,15,18;174:11; 178:6;180:16;183:8,24; 184:2;186:15;187:21; 190:19;195:7;196:9; 209:21;211:23;214:16, 21;217:16,18,19;219:2; 222:13 ring (1) 14:16 rings (1)	14:17 risk (1) 62:11 Road (1) 3:5 Robert (7) 14:2;33:19;99:23; 128:2;135:14;138:14; 185:20 Rochelle (7) 3:6;46:22;47:4;55:22; 64:12,16;65:21 role (1) 181:12 roles (1) 62:3 room (7) 87:11;117:25;119:15; 132:22,25;136:23;216:2 Roth (2) 95:16;97:8 ruling (1) 118:25 run (1) 70:16
S				
sacrifices (1) 61:11 safety (3) 23:22,24;24:5 SAGI (71) 3:21;15:19;46:21; 47:4,25;48:4,6,10,13; 55:20;58:18,20;59:2,7; 63:25;64:3,9;114:24; 132:22,25;136:12; 141:17;148:5,9;152:12; 154:14;155:5,8;161:2,4, 13;163:12,17;171:6; 183:3,8,21;184:3;186:4; 187:4,6,11,17;189:24; 191:18;192:18;193:3; 195:21;196:12,18; 199:23;205:3;207:7; 208:22;211:11,13,18,21; 212:7,10;213:4,6;214:4, 9,12;217:6,18,25;218:6, 11;219:9 Sagi's (4) 47:2;198:19;200:6; 210:4 sale (14) 185:23;186:2,3;187:9, 10,18;188:8,14;196:23; 197:9;198:5,8;199:13; 208:4 same (24) 19:7;20:18;21:3; 41:19;52:21;67:6;74:15; 97:13;98:13;108:21; 122:12;123:6;126:18;				

ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

144:10;145:6;157:14; 170:22;199:14;205:7; 17:206:19;216:10,14,19	seriously (1) 95:22	45:8;76:3;79:16;80:20; 88:5;89:3,5,23;90:12; 92:9,18,20,25;94:20,22, 23;95:4,7,11;99:18,23; 102:14;104:21;108:2,8; 111:12;167:17;176:7, 13;177:2,7;210:14; 223:20	208:20	179:19,19;223:3,24
satisfaction (1) 180:18	serve (7) 46:6,9;47:17;48:8; 63:7;66:20;179:9	signing (3) 44:24,111:24;209:19	sounds (1) 189:18	stated (6) 71:25;103:14;129:14; 132:5;138:18;163:11
saw (6) 10:7,9;11:10;70:6; 159:7;185:5	service (1) 81:6	simple (5) 46:13;106:24,25; 140:18;168:3	span (1) 141:25	statement (16) 39:15;81:21;82:3,5,7; 83:3,5;85:24;117:6,12; 120:6;121:10;151:14; -155:14;157:4;179:7
saying (16) 27:12;57:20;113:8; 121:7;122:21;160:7; 177:24;178:11;187:11, 16,18;189:24;194:21; 196:12;202:4;206:13	serving (3) 48:11,14;62:24	simply (2) 26:12;27:4	speak (35) 7:22;10:19,20;41:4,7, 10,13,15;46:15,20,21, 24;47:7,10,11,12,15,23; 48:3,6;83:19,23;89:16; 104:14;110:20;113:5; 134:13,14;164:13,16; 189:4,24;192:15,18; 213:4	statements (2) 99:14;118:19
scheme (1) 153:18	session (1) 25:18	single (2) 82:9;141:22	speaking (16) 83:10,14;91:17;104:6, 16;110:22;111:17; 112:20;117:19;122:6; 126:24;130:16;163:3; 165:6;197:4;216:4	stating (1) 152:5
search (1) 60:12	sessions (1) 27:8	sister (3) 211:12,25;214:14	specific (1) 29:7	stay (2) 132:18;142:7
second (14) 8:18,21,23;9:2;10:8; 106:6;134:16;149:13, 15;163:12;168:21; 186:21;192:22;204:23	set (7) 20:18;21:3;76:16; 91:2;124:16;136:19; 176:20	sit (19) 17:25;24:11;26:4; 27:14;30:24;35:12,92:8; 95:10;98:24;106:14; 107:3,14;111:21;114:9, 14;122:25;147:3; 152:17;216:12	speaks (1) 127:11	steamed (1) 120:12
secretary (2) 132:10;135:8	sets (1) 18:14	sitting (2) 103:17;119:15	specifically (4) 102:5;124:15;174:6; 220:25	step (1) 186:5
section (4) 96:19;133:6,10,15	settle (1) 142:8	situation (1) 164:23	specifics (1) 29:10	stepping (1) 86:24
secure (2) 22:6;23:21	Several (4) 147:10,19;160:2; 203:13	slow (1) 127:14	speculate (1) 187:15	still (11) 40:7;87:20;102:14; 106:14;119:18;174:16; 176:10,16;177:17; 180:8;185:14
seeing (5) 108:15;109:15,19; 182:8;219:14	Seymour (2) 43:17,18	slowly (1) 169:9	speculation (2) 158:22;167:5	stipulation (1) 17:13
seek (4) 20:14,15;140:10; 178:22	share (5) 148:10;150:19;171:6; 175:19,22	small (2) 22:4;221:10	spend (1) 118:22	Stop (23) 86:13;104:5;112:20; 126:20,25;127:5;131:23, 24;138:3;184:10,12; 186:22,24;187:2,10; 188:14;191:18,20; 195:21;196:13,18,20; 217:16
seeking (2) 130:14;190:17	shares (27) 22:7;30:21,22;31:2; 148:13,20,24,25;150:12; 183:22,23;184:3,4,7; 198:9,12,20;199:12,20; 217:22,24;218:2,4,4,6,7, 10	sold (5) 158:13;183:21,25; 184:3,7	spending (1) 196:25	stopped (2) 127:25;170:3
seems (2) 84:21;178:22	sheets (1) 67:21	sole (1) 108:8	split (1) 205:22	stopping (1) 196:15
sell (1) 213:8	short (1) 20:5	solution (2) 171:24,25	spoke (13) 24:24;28:7;47:4;89:6, 10,12;91:9,12,22;132:9; 211:18,21;213:6	story (3) 56:4;166:2;170:2
selling (4) 157:25;158:10,10; 198:20	shoulder (1) 138:4	somebody (13) 48:8;60:9;61:10; 63:15;67:7;80:7;158:9; 161:6,9,10;164:10; 205:11;214:17	ss (1) 223:4	Street (1) 6:14
send (1) 57:15	show (9) 10:21;25:5,13;141:17; 168:15;188:16;197:14; 200:7;209:12	somehow (1) 159:8	stand (2) 176:2,6	strike (13) 18:15;59:24;95:11; 106:8;110:18,23;111:5; 113:9,20;170:10,11; 185:2;197:11
sending (5) 147:4,6,7,15,15	showed (2) 24:25;70:3	someone (15) 43:13;45:17,18;49:12; 62:7;63:21;78:23;79:3; 87:24;120:2,2;124:3; 155:25;158:2;180:10	standard (4) 79:23;80:2,14,16	striking (1) 118:9
sense (2) 164:5,9	showing (1) 93:11	son (1) 115:4	stands (1) 156:22	strongly (1) 85:16
sensible (2) 142:8,10	shut (1) 104:12	sooner (1) 130:18	start (11) 8:13;34:21;40:24; 52:21;68:25;85:23; 104:14;116:9;127:15; 180:7;212:7	stuff (1) 31:8
sent (9) 22:18;77:19;122:17, 23;124:10,14;129:15; 144:22;182:5	side (1) 56:3	sorry (10) 20:23;31:23;62:14; 101:25;115:18;147:13; 173:3;179:20;196:21;	started (7) 14:4;83:2;125:22; 143:6;166:24;192:11,12	subject (2) 139:4;201:21
sentence (2) 175:25;181:4	sign (6) 43:13;89:19;91:5,23; 210:12;222:14	State (8) 6:5,10;135:7;157:17;	STASIUK (2) 3:22;136:20	subjected (1) 139:14
separately (1) 19:9	signature (11) 9:15,18;11:5,6;38:4,7; 74:6;90:12;92:5;149:13; 173:15			submitted (6) 96:17;97:17;141:6,10,
September (7) 9:20,21;102:13; 103:21;104:22,23;105:5	signed (37) 9:19;43:21;44:7,23;			

**ORLY GINGER VS.
DALIA GINGER, et al**

**DALIA GINGER
December 13, 2012**

13;173:18 Subscribed (1) 223:20 subsequently (1) 107:9 subset (1) 22:4 substance (6) 58:7;77:18;87:8; 189:14;213:16,19 successful (1) 212:8 successor (4) 38:3,24;42:24;69:7 sue (11) 211:11,25;212:4,7,10, 12,16;214:18,19;217:18; 219:9 sued (22) 34:15,22;35:2;49:22; 62:12,15;80:24;159:21, 21;160:14,21;161:7; 162:6,10;163:24;166:3; 183:8;211:13,23; 214:15;218:9,15 sues (1) 79:3 suffer (3) 7:17;8:2,9 sufficient (5) 100:12;102:6,15,21; 106:15 suggested (2) 113:15;132:14 suing (8) 30:19;40:24;166:5; 196:18,20,23;213:6; 214:13 suit (1) 161:16 suits (1) 162:11 Sullivan (1) 14:15 sum (4) 58:7;77:17;213:16,19 summary (3) 131:16;140:20;141:4 summons (2) 8:23,25 supposed (13) 12:8,10,14,17,21; 122:10;133:8,13; 144:25;179:8;199:25; 206:19,24 sure (31) 9:17;14:3;28:6;35:23; 47:16;61:15;66:16; 72:14;73:3;81:8;92:11; 93:21;97:16;110:13; 118:13;119:7,25; 121:15;122:16,22; 124:11;128:14;129:13;	143:13;153:2;158:11; 167:10;176:12;180:12; 195:3;207:2 surrogate (11) 84:22;85:12;95:13,16; 96:3;97:8,12;130:10,13; 140:6;173:19 swore (1) 99:12 sworn (5) 6:2,4,17;11:5,7 T table (1) 112:25 tactic (1) 137:13 tag (1) 94:4 tainted (1) 205:15 talk (22) 36:18;37:2;52:21; 57:10;59:18;62:23;77:5, 9,11;78:5;95:24;102:9; 111:7;150:9;152:7; 186:23;189:22;207:22; 211:10,25;213:25;218:6 talked (4) 26:3;66:2;67:11; 163:17 talking (24) 7:23;15:16;17:3; 71:21,22;106:4;124:4; 126:21;130:9;136:6; 138:3;146:18;154:9; 165:17;183:7,8,22; 189:23;195:15;209:10; 213:2;214:3,4,8 talks (2) 101:23;102:2 task (3) 63:12,14;93:3 teach (1) 204:2 technical (1) 13:12 telephone (2) 134:2;142:17 telephonic (3) 134:5,20;142:20 telling (9) 8:11;27:21;34:15,21; 101:16;127:2;159:19; 181:22;208:16 tells (1) 146:25 ten (1) 216:10 term (1) 79:13 terminate (1)	109:5 terms (1) 165:6 testified (6) 6:6;49:19;60:2;63:4; 70:15;71:7 testify (2) 162:19,23 testifying (3) 8:11;206:11,15 testimony (9) 60:5;71:10;152:11,14; 162:21;189:5,13;223:8, 11 texts (1) 56:22 Therefore (5) 117:23,25;141:18; 162:21;178:10 thinking (4) 61:6,21;80:10;140:14 third (2) 75:5;149:16 thoroughly (1) 114:5 though (2) 207:23;214:14 thought (14) 47:25;62:5;70:15; 79:23;80:6;132:7; 154:16;162:5;164:7,9; 177:9;189:14;207:3; 214:25 threatened (1) 119:2 three (3) 8:15;113:23;152:3 throughout (1) 47:19 Thursday (3) 25:20;26:4;222:11 TI (4) 31:2;218:2,6,7 times (12) 34:15,22;35:2,5; 147:10,19;160:2; 162:20;194:14;203:13; 211:21;216:10 tired (3) 202:3;216:12,15 today (29) 6:20;7:10;8:11;10:14; 17:25;24:11;25:20;26:4; 27:14;30:24;35:12;58:5; 92:8;95:10;98:22; 106:14;107:3,11,14; 111:22;114:9,14,16; 122:25;124:17;147:3; 152:17;211:13;218:15 told (26) 27:7;28:4;36:12,24; 55:18,20,21;74:2;80:2,7; 93:22;119:24;128:19;	132:11;135:8;147:23; 164:25;187:14;200:9, 25;207:15;208:3,22; 211:20;213:16,19 took (5) 23:17;52:15;151:4; 156:3;157:21 tools (1) 195:20 top (2) 73:17;90:11 topic (2) 16:10,11 topics (7) 28:2,10,12,15,25; 29:20;85:17 touch (5) 112:14,18;115:21,25; 138:7 touching (3) 112:10;115:23,24 TPR (46) 3:12;120:25;121:24; 136:13;139:10;149:2; 150:11,16,19;167:2,19, 20;170:14,21;171:4,7; 178:2,20,21;179:13; 182:23;183:6,14,18,20, 21,22,23,23;184:5,7; 186:25;187:2;196:2,20; 197:20;199:12;200:20; 212:3,21;217:24;218:4, 17,22,24;219:3 track (8) 17:5;34:19;35:15; 36:8,12,22,24;162:11 transcribing (1) 135:20 transcript (4) 143:21;222:14;223:8, 10 transfer (2) 153:19;154:17 transferring (1) 150:16 treated (1) 214:15 TRI (7) 22:7,15;30:22,23; 217:21;218:4,10 trial (2) 138:10;139:25 Trickery (1) 163:4 tried (6) 56:14;63:19;157:25; 160:4;211:24,25 true (21) 10:16;18:4;28:12; 153:21;155:12,12,14; 169:13;172:23;174:18; 178:3;180:20;181:13; 185:14,22;199:10;	206:10;211:15;219:21; 223:10,13 Trump (2) 22:14;35:10 Trumps (2) 30:19;35:9 trust (181) 7:13,19,22,23,24; 11:19,22,25;12:5,8,11, 14,15,16,18;13:7,24; 14:7,10,13,23;15:5,25; 18:5,18;19:10,16,18; 20:15,20;21:4,6,9,13,19; 22:5,8,23;23:6,18;24:19; 25:2,3;29:6;30:19,25; 31:2,3;34:5,8,9;35:8,12, 13,24;37:5,11;39:4; 40:14;41:17,25;45:10, 17;46:10,15;50:5,54,2; 60:4;61:8;62:3;65:23; 66:5,10,21;69:5;71:9; 75:2,12,20,23;78:17; 88:7,13,24;89:17,20,24; 91:6,10,24;97:21;98:10; 104:20,25;105:5;107:5; 10;108:9;110:3;111:23; 114:8;115:7;124:12,13, 25;125:6,6,25;126:9,11; 127:23;128:5,12;129:3; 17:20;144:14;145:2,15, 16;146:2,20;147:15; 148:13,13;149:3;158:2; 164:12,21,23;166:9; 179:9;180:11,12,15,18, 24;181:8,10,15,16,23,24, 25;182:7,12,16,18; 183:11;188:6;190:10,13, 14,15,16,18,20;192:10, 13;194:18,19;196:5; 197:2;199:9;202:10; 209:3,20;211:12,12,14; 212:8,11,20;213:7; 214:13,18,20;217:20; 218:10,15;219:10 trustee (163) 7:12,19;11:18,21,24; 12:7,10,17;13:4,7,16,23; 19:14,18;22:3,5;24:7,8, 9,12,14,15,19;29:21,21; 30:3,25;34:8;35:8,11; 36:23;37:5,6;38:2,3,9, 17,18,19,24;39:5;40:14, 16,25;41:24;42:13,21; 43:2;45:2,5,10,17,19; 46:6,6,14;48:2,8,11,14; 50:4,21;51:18;54:2,20; 59:2,19;60:3,10,14; 62:11,25;63:8;65:6,15, 23;66:5,9,20;67:14,15; 69:5,7;70:16;71:9; 75:22,22;87:23;88:6,12, 19,22,89:17,19,23;91:6, 9,24;92:10;93:5,24;
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ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

95:14;104:20,24;105:4; 7;106:16;107:4,10; 108:2,8;110:2;122:7; 123:2,21;124:12,25; 125:6;126:8;129:17,19; 20;140:24,25;144:14; 145:10,15;146:20; 148:12;161:18,21,23; 164:12,21,22;166:9; 177:9;178:8,23;179:9; 180:24;181:7,12,24; 182:18;183:11;188:6; 190:9,11,17;194:19; 196:7,8;198:11;199:2; 200:19;201:18,23; 202:6;203:11;207:13; 209:2;214:19	99:10;102:5,14;112:24; 152:3;176:8;180:19; 223:9 understood (3) 32:17;53:18;80:18 unfortunately (2) 171:8;207:18 Unless (2) 29:16;206:4 unlike (1) 181:23 unquote (1) 176:5 up (23) 43:11,12;52:5,11; 53:2,6;55:24;56:17; 57:2;62:23;63:6;66:4; 106:7;141:17;142:6; 150:24;176:20;196:12; 197:14;199:11;200:7; 203:5;217:24 upon (12) 11:15;99:15;109:5; 110:3;127:3;130:3; 138:4,5;144:9;159:18; 164:3;169:24 urinate (1) 86:18 use (2) 137:12;195:21 using (1) 22:23	Wait (26) 8:6;14:20;36:14; 52:19;60:19,19;101:19; 103:19,25;104:13; 105:23;111:14;114:6; 115:15;134:15;137:8; 142:25;163:12;168:21; 195:9;202:24;204:3; 216:6;219:24;220:12,13 waiting (1) 204:14 waive (1) 194:3 Waiving (1) 32:24 walked (1) 121:8 walking (1) 104:6 WALTER (2) 3:22;136:20 wants (2) 142:4;187:23 Warren (3) 135:15;189:9,23 waste (1) 84:4 wasting (2) 34:23;130:23 way (33) 21:9;79:24;80:2,14, 16;105:6;106:19;115:5, 6,22;124:6;150:15; 154:16;159:7;161:5,8,9, 11,13;164:6,15;165:20; 175:15;176:25;187:2; 188:7,14;202:10; 203:19;204:6,20; 211:22;214:15 wealth (2) 153:19,24 Wednesday (3) 25:21;70:3;141:18 week (4) 25:25;26:13;70:4; 98:23 weeks (1) 69:10 weighed (2) 191:9,16 welcome (1) 121:6 welcomed (1) 139:12 weren't (3) 88:19;200:4;220:25 what's (18) 10:25;28:19;37:18; 39:9;55:25;57:21;81:9; 94:7,20,23;98:19;110:9; 112:24;145:8;166:4; 168:21;188:16;207:18 whatsoever (5)	21:11;44:17;79:20; 96:20;101:17 whenever (3) 7:22;44:11;162:6 WHEREUPON (36) 6:1,20;5,10;23:9; 32:22;33:8;42:7;51:8, 14;55:4;58:15;60:21; 61:18;71:2;87:13,15; 105:14;116:14,17; 129:9;132:3;133:25; 134:18;142:19;143:23; 156:20;158:25;171:16; 180:4;188:3;189:7; 200:22;202:25;208:12; 221:22;222:8 Wherever (1) 198:19 whole (5) 26:21,22,24;97:11; 103:10 who's (3) 136:5,6;139:21 wife (1) 47:2 William (2) 220:6;221:9 willing (6) 59:7;60:13;61:11; 63:7;114:6;159:22 wipe (1) 180:17 wiped (2) 182:16,18 wish (5) 18:19;39:4;40:15,23; 118:23 wished (3) 41:24;50:20;51:18 wishes (1) 85:9 wit (3) 134:6,21;142:22 withdraw (2) 106:25;131:13 without (3) 87:24;194:21,22 witness (212) 6:1,3;8:15;10:3;13:11, 14;16:7,11,20,23;18:9; 20:23;23:11;25:11; 28:19;29:12;33:17,21; 34:17,24;36:11;37:20; 38:22;39:8,18;40:19; 41:12,20;42:3,9,15;43:8; 44:10;45:4,14;46:2; 47:14;48:17,23;49:6; 50:13,23;51:4;52:22; 53:8;54:15,22;55:12; 56:6,13,15,20;57:7,9,17, 25;58:11;59:5,13,21; 60:7,17,25;61:5,17,20; 63:17;64:8,22;65:17,25;	66:14,23;67:17;68:2,24; 69:12;70:11;71:4;72:3, 13;73:6,13;74:16;75:7, 15;76:6,25;77:14;79:8, 12,22;80:5,12;82:13,18; 84:7,10;89:2,11;90:12, 19,23;91:19;92:2,95:23; 97:3,14;98:3,7,15; 100:25;101:7,10;103:3, 13,17;104:17;105:10,16; 106:21;107:20;108:24; 112:14,23;113:16; 115:21,24;116:7,11; 122:13,15;123:7,25; 124:19,24;125:10,20,21; 126:15,17,20,20;128:18; 129:11;131:19;132:21, 24;137:4;138:3,7,19; 142:23;143:20;144:19; 145:7;146:9,23;147:20, 22;148:16;149:17; 152:23;155:11;156:19, 23;157:7,16;159:3; 160:3;161:22;162:19; 165:5;167:7,24;170:17, 23;172:16;175:3; 176:24;177:20;179:16, 20,24;183:2;191:12; 192:25;193:21;198:15; 200:11,24;201:12; 202:22;203:15,25; 206:12,16;208:8,14; 209:6,9;210:7,11;216:4, 11,15,18;217:4,10; 219:8;220:9,14 witness' (1) 138:4 witnesses (2) 139:14;141:25 Worcester (1) 14:16 word (3) 108:25;113:8;137:24 words (5) 99:12;178:15,18; 187:11,20 work (10) 15:22;16:4;18:16,23; 19:10;21:19;22:3;54:19; 99:21;166:24 worked (2) 15:14;150:13 worth (1) 217:22 write (6) 57:20;70:13;72:8,21; 73:3;165:14 writing (3) 79:24;80:3,16 written (3) 70:8;109:5;165:8 wrong (3) 77:24;162:22;166:21
trusteeship (5) 39:3;41:4,8,16;58:23 trusts (1) 180:12 trust's (2) 78:23;87:23 truth (6) 6:17,20;8:11;99:13, 13;107:7 try (16) 56:3;58:8;63:21; 137:13;141:20;143:16; 158:12;163:5;187:10; 188:7;197:14;198:11; 200:19;201:18;207:23; 211:11 trying (11) 17:20;31:24,25;32:6, 12;33:14;50:2;63:14; 103:16;177:8;186:3 Tuesday (8) 25:21;26:14,17;28:8, 16;29:8;70:3;141:18 two (23) 11:13,16;18:14;19:6, 8;20:4;27:16,22;28:7; 29:2;30:7,15;31:16; 86:21;109:7,11,14; 121:14;122:10;139:18; 148:5;193:19,20 type (1) 43:12 typed (1) 43:11	valid (1) 177:22 value (4) 153:7,9;180:15; 181:15 valued (2) 151:5,13 verification (2) 99:6,18 verified (4) 8:23;9:2;98:25;99:8 versus (1) 17:9 via (2) 134:5,19 VOICE (2) 134:11,15 volunteer (2) 48:20;59:8 volunteered (3) 48:18,21,24 volunteers (1) 52:5			
U	W			
UCC (2) 201:24,25 unclear (1) 68:18 uncomfortable (2) 48:2,5 under (16) 9:19;32:4;74:20,25; 75:12,20;87:20;88:23;	Wachtel (2) 3:22;136:20			

ORLY GENDER VS.
DALIA GENDER, et al

DALIA GENDER
December 13, 2012

<p>wrongdoing (1) 80:25</p> <p>wrote (4) 70:9;72:11;73:7,11</p>	<p>191:10;193:19;203:17; 204:9;206:11,14;209:4; 210:10;213:21;215:20; 24;216:3,9,13;217:9; 221:19</p>			
<p>Y</p>	<p>zip (1) 6:15</p>			
<p>year (1) 14:25</p> <p>years (5) 121:14;141:25;142:6; 207:17;219:13</p> <p>yesterday (2) 25:21;26:15</p> <p>Yoav (9) 34:16,22;96:4;130:24; 135:2;136:12;140:16; 163:5;217:4</p> <p>York (8) 3:6,14,14;6:5;113:4; 133:12,16;223:24</p>				
<p>Z</p>				
<p>Zeichner (1) 134:25</p> <p>zero (3) 151:6,13;152:6</p> <p>ZILBERFEIN (173) 3:3;13:9;16:9;17:16; 18:7;19:19;20:21;21:15; 24:22;32:10;36:18; 38:10,21;39:6;40:17; 41:5,11,19;42:2,14;43:7; 44:9;45:3,13,24;46:18; 47:13;48:16,22;49:5,13, 16;50:10,22;51:2,21; 52:8;53:7,21;54:4,9,14, 21;55:11;56:5,12,19; 57:6,13,16,24;58:10,13; 59:4,12,20;60:6,23; 62:17;63:2,16;64:7,14, 21;65:11,16,24;66:11, 22;67:16,25;69:8,11; 70:10,18,22;71:15,24; 72:12,22;73:5,12;74:11, 15;75:14;76:5,24;77:7, 13;78:8,13,18;79:7,10, 21;80:4,11;81:13,19; 85:20,23;87:12;90:4,8; 96:12,16;97:10,24;98:5, 14;102:24;103:5,10,13; 105:8;106:20;117:5,10; 119:4,12,22;120:5,10, 22;121:16;122:12; 123:6,22;130:17;131:5, 11;133:6,10,15;136:3, 15,16;141:11;143:2,9, 17;144:11,18;145:5; 146:8,15,22;147:21; 152:22;156:6;158:23; 167:6,23;176:18; 179:23;182:21;183:4;</p>				

SURROGATE COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of
ORLY GINGER,

Petitioner,

-against-

LEAH FANG, DAVID A. PARNES, THE SAGI
GINGER TRUST, DALIA GINGER, JOEL
ISAACSON and MARTIN COLEMAN,

Respondents.

Index No. 2008/0017

**AFFIDAVIT OF DALIA
GINGER**

I, Dalia Genger, being duly sworn hereby deposes and says:

1. I am sole trustee of the Orly Genger 1993 Trust (the "Orly Trust"), a true and complete copy of which is attached hereto as Exhibit A. My daughter, Orly Genger, the Petitioner herein, is the lifetime beneficiary of the Orly Trust. My son, Sagi Genger, is the lifetime beneficiary of the Sagi Genger 1993 Trust (the "Sagi Trust"), which is a contingent remainderman of the Orly Trust. I submit this affidavit in opposition to the Orly Trust's Amended Petition To Designate Trustee Or, In The Alternative, To Appoint A Special Trustee, And To Compel Accounting Order (the "Petition").

My Appointment as Successor Trustee

2. I understand that Leah Fang had acted as trustee of the Orly Trust since approximately April 26, 2007, the date on which David Parnes resigned as trustee and appointed Fang as successor trustee. I understand that Parnes appointed Fang by executing a signed and acknowledged instrument of resignation and appointment of successor trustee, a copy of which is attached hereto as Exhibit B. I understand that Fang also executed a signed and acknowledged instrument of acceptance of trusteeship, a copy of which is attached hereto as Exhibit C. I further

understand that Parnes sent both documents to the grantor of the Trust, Arie Genger, by registered mail in full compliance with the terms of the Trust.

3. On January 4, 2008, Leah Fang resigned as trustee of the Orly Trust and appointed me as successor trustee by executing an acknowledged Instrument of Resignation of Trustee and Appointment of Successor Trustee, a copy of which is attached hereto as Exhibit D. On the same day, I executed an acknowledged Instrument of Acceptance of Trustee, a copy of which is attached hereto as Exhibit E. In accordance with the requirements of the Orly Trust, I personally delivered both instruments to my daughter, the beneficiary, within the thirty (30) day time period.

The Relief Sought by Petitioner

4. Orly and Sagi are my children and their best interest is my only concern. I would never do anything as trustee of the Orly Trust (or in any other capacity) to harm my daughter's interests.

5. Neither the Orly Trust nor the Sagi Trust owns any interest in TPR Investment Associates, Inc. ("TPR"). The Orly Trust and the Sagi Trust each own a 48% interest in D&K LP ("D&K"), which in turn owns approximately 50% of TPR's common shares.

6. D&K's interest in TPR was purchased by D&K with a promissory note in the face amount of \$8.95 million (with interest, approximately \$10 million to date) that is secured by D&K's shares in TPR (the "Note"). The Note has not been current since 2001.

7. Since D&K's assets are insufficient to cover its obligations, D&K represents a net liability to the trust, not an asset. The only asset of the Orly Trust is a 20% interest in Trans-Resources, Inc., which interest is actually controlled by Arie Genger through an irrevocable proxy given by each Trust to Arie.

8. After considering various options to mitigate harm to the Orly Trust and the Sagi Trust resulting from D&K's failure to keep current on the Note, the Note was exchanged with Parnes for the assumption of a contingent liability and nominal consideration. Based on tax advice, the purposes of the arrangement were forbearance and tax deferment. Under the agreement, Parnes agreed to terms of forbearance against D&K. I do not stand to gain anything personally by the agreement, other than protecting the estate plan implemented for the benefit of my children.

9. If the Note is returned to TPR, which my daughter seems to seek through the appointment of a new trustee, it would re-create a related party obligation, and would have to be accelerated or forgiven. This would result in the destruction of the value of both the Orly Trust and the Sagi Trust by wiping out their assets in satisfaction of D&K's obligations either on the Note or to the IRS if the Note is forgiven by TPR. The Trust's shares of TRI, its only asset, would have to be sold, to the only available buyer, due to his irrevocable proxy: Arie. The destruction of the Orly Trust in this manner would therefore accrue directly to the benefit of Arie—in that he would gain a desired control of TRI—and to my benefit—in that I would acquire the D&K's interest in TPR. This result is inconsistent with my responsibilities to my children as their mother and as trustee of the Orly Trust. Regretfully, my daughter does not appear to understand the consequences of her demands.

10. In addition, my daughter's claim that Sagi and I have been stripping TPR of its value by taking bogus compensation out of the company is wrong. I am a shareholder of TPR. In that capacity, I have been effectively redeeming my shares of TPR. This is consistent with an overall estate plan for the benefit of both Orly and Sagi, because it increases D&K's, and indirectly, the Trusts' interest in TPR. For his part, Sagi is an employee and officer of TPR, and

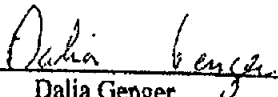
has received compensation in exchange for managing TPR's investments and functioning as its Chief Executive Officer. Neither my daughter nor her Trust is an employee, consultant, or shareholder of TPR and accordingly neither she nor her Trust is entitled to any compensation from the company.

Petitioner's Request for a New Trustee

11. I am trustee of the Orly Trust, and there is no basis for the appointment of a new trustee. To the extent the Court is considering the appointment of Martin Coleman, I object. Coleman is a former partner in, and may still be affiliated with, the law firm Sonnenschein, Nath & Rosenthal LLP, which is currently a defendant in a litigation with TPR in which TPR seeks over \$100 million in damages. He also sat as a director of TRI during a period of time for which Sonnenschein and three TRI directors are being sued for malpractice and fraud. There is a distinct possibility that Coleman may be added as another defendant. Accordingly, he would not make an appropriate trustee.

12. To the extent the Court is considering appointing Joel Isaacson, I object to his appointment as well. Isaacson, who is my daughter's paid accountant, was specifically informed of the reason for the assignment of the D&K Note from TPR to Parnes. Isaacson admitted that he understood and agreed with the reason for the exchange after sitting in on a two-hour briefing on the matter. He failed, however, to disclose this information to my daughter, even though her Trust's viability may rise or fall based on it. In sum, he has shown himself to be concerned with interests inconsistent with those of my daughter.

Dated: New York, New York
March 11, 2008


Dalia Genger

NO109654v

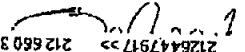
P 3/3

KATARZYNA SCHWARTZ
Notary Public, State of New York
No. 01SC8158649
Qualified in Queens County

COMMISSION EXPIRES 01/01/2011

SUBORN TO BEFORE ME THIS

4 11TH DAY OF MARCH 2008


Dalia Genger 2126447917 212 660 3001

2008-03-11 14:15

ORLY GINGER 1993 TRUST

INSTRUMENT OF RESIGNATION OF TRUSTEE
AND APPOINTMENT OF SUCCESSOR TRUSTEE

The undersigned, DAVID A. PARNES, acting as Trustee, since October 22, 2004, of the Orly Genger 1993 Trust under Trust Agreement dated December 12, 1993, between ARLE GINGER, as Grantor, and LAWRENCE M. SMALL, and SASH A. SPENCER, as Trustees, does hereby, pursuant to the provisions of Section B. of Article Seventh of said Trust Agreement, appoints LEAH PARNES to act as Trustee under said Trust Agreement in the place and stead of the undersigned in the event of the resignation of the undersigned as such a Trustee, and the undersigned does hereby resign as such a Trustee as of the date hereof.

Dated: April 26, 2007

David A. Parnes

State of New York)
County of New York) ss.

On the 26th day of April, 2007, before me, the undersigned, personally appeared David A. Parnes, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as aforesaid; and that by his signature on the instrument, he executed the same in the City of New York, County of New York.

Notary Public

JOSEPH CAPUTO
Notary Public, State of New York
No. 01644932032
Qualified in Richmond County
Commission Expires May 31, 2010

I accept the position as trustee
of the ~~Orly~~ Orly Genger 1993 Trust.

4/26/07
Leah Parnes

To:
David A. Palmer
29 Elkemill Street
Tel Aviv 69497
Israel

RELEASE

Whereas, you served as Trustee, since October 22, 2004 ("Commencement Date") as trustee of the Only Genger 1993 Trust (the "Only Trust") and the Ragi Genger 1993 Trust (the "Ragi Trust") jointly the "Trusts"; and

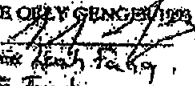
Whereas, you have tendered your resignation from your position of trustee of both Trusts ("Resignation"); and

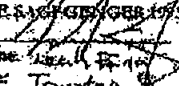
Whereas, you have appointed a general release form, as the sole appointed successor trustee of the Trusts, in connection with your resignation, or resignation, as trustee of the Trusts, from the Commencement Date through the date upon which your Resignation becomes effective ("Resignation Date");

NOW, THEREFORE, I HAVE AGREED AS FOLLOWS:

You are hereby released and discharged, to the fullest extent authorized by law, or under the Trusts documents, from the consequences of any action or inaction that you might have taken, as trustee of either or both of the Trusts, from the Commencement Date through the Resignation Date. Nothing herein shall deprive from the information rights you are entitled to, from any third party, under the Trusts documents.

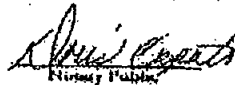
IN WITNESS WHEREOF, the undersigned have executed this Release as of April 26, 2007.

THE ONLY GENGERS TRUST
By: 
Name: Leah Fang
Title: Trustee

THE RAGI GENGERS TRUST
By: 
Name: Leah Fang
Title: Trustee

State of New York)
County of New York) ss.

On the 26th day of April, 2007, before me, the undersigned, personally appeared LEAH FANG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as aforesaid, and that by his signature on the instrument, he executed the same in the City of New York, County of New York.


Notary Public

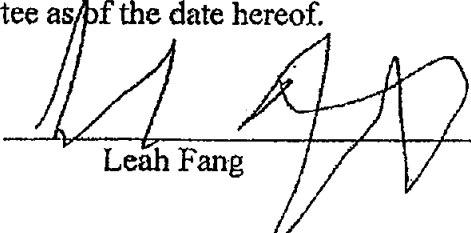
NOTARY PUBLIC
Notary Public, State of New York
No. 0104432032
Qualified in Westchester County
Commission Expires May 31, 2010

ORLY GENDER 1993 TRUST

INSTRUMENT OF RESIGNATION OF TRUSTEE
AND APPOINTMENT OF SUCCESSOR TRUSTEE

The undersigned, LEAH FANG, to the extent currently the Trustee of the Orly Genger 1993 Trust under Trust Agreement dated December 13, 1993 between ARIE GENDER, as Grantor, and LAWRENCE M. SMALL and SASH A. SPENCER, as Trustees (the "Trust Agreement"), ~~is~~ vested with powers of appointment as Trustee under the Trust, the undersigned does hereby, pursuant to the provisions of Section B of Article SEVENTH of said Trust Agreement, appoint Dalia Genger to act as Trustee under said Trust Agreement in the place and stead of the undersigned in the event of the resignation of the undersigned as Trustee, and the undersigned does hereby resign as such Trustee as of the date hereof.

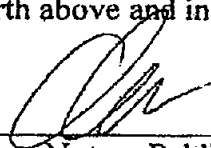
Dated: January 4, 2008



Leah Fang

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 4th day of January, 2008, before me, the undersigned, personally appeared LEAH FANG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity as aforesaid, and that by her signature on the instrument, she executed the same in the State and County set forth above and in the City of New York.



Notary Public

CHRISTINE BERTT
Notary Public, State of New York
Registration # 01BE6137973
Qualified in Nassau County
My Commission Expires Dec. 5, 2009

ORLY GINGER 1993 TRUST

INSTRUMENT OF ACCEPTANCE OF TRUSTEE

The undersigned, DALIA GINGER, to the extent not already properly appointed Trustee of the Orly Genger 1993 Trust under Trust Agreement dated December 13, 1993 between ARIE GINGER, as Grantor, and LAWRENCE M. SMALL and SASH A. SPENCER, as Trustees (the "Trust Agreement"), hereby accepts the appointment as Trustee pursuant an Instrument of Appointment made by Leah Fang, dated January 4, 2008.

Dated: January 4, 2008


Dalia Genger

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 4th day of January, 2008, before me, the undersigned, personally appeared Dalia Genger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity as aforesaid, and that by her signature on the instrument, she executed the same in the State and County set forth above and in the City of New York.


Notary Public

BEYMOUR H. FANG
Notary Public, State of New York
e 2 FA No 31-8230900
Qualified In New York County
Commission Expires Sept. 30, 2010

Index No. 0017 *Year* 2008

SURROGATE COURT OF THE STATE OF NEW
YORK COUNTY OF NEW YORK

ORLY GINGER,

Petitioner,

-against-

LEAH FANG, DAVID A. PARNES, THE
SAGI GINGER TRUST, DALIA GINGER,
JOEL ISAACSON and MARTIN COLEMAN

RESPONDENTS

Affidavit of Dalia Genger

SULLIVAN & WORCESTER LLP

Attorneys for Respondent

1290 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10104
(212) 660-3000

SULLIVAN & WORCESTER LLP

*ORLY GINGER VS.
DALIA GINGER*

*DALIA GINGER
February 7, 2013*

Ellen Grauer
COURT REPORTING
Co. LLC



126 East 56th Street, Fifth Floor New York, New York 10022

PHONE: (212) 750-6434 FAX: (212) 750-1097

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ONLY GINGER VS.
DALIA GINGER

Pg 25 of 150

DALIA GINGER
February 7, 2013

Page 226	Page 228
<p>1 SUPREME COURT OF THE STATE OF NEW YORK</p> <p>2 COUNTY OF NEW YORK</p> <p>3 -----X</p> <p>4 ONLY GINGER in her individual capacity</p> <p>5 and on behalf of the Orly Genger 1993</p> <p>6 Trust (both in its individual capacity</p> <p>7 and on behalf of D&K Limited Partnership),</p> <p>8</p> <p>9 Plaintiff,</p> <p>10 - against -</p> <p>11 DALIA GINGER, SAGI GINGER, LEAH FANG,</p> <p>12 D&K GP LLC, and TPR INVESTMENT ASSOCIATES,</p> <p>13 INC.,</p> <p>14</p> <p>15 Defendant</p> <p>16 Index No. 109749/09</p> <p>17 -----X</p> <p>18</p> <p>19 575 Lexington Avenue</p> <p>20 New York, New York</p> <p>21 February 7, 2013</p> <p>22 10:41 a.m.</p> <p>23</p> <p>24 RESUMED DEPOSITION of DALIA GINGER,</p> <p>25 taken before Annette M. Montalvo, RMR, and a</p> <p>Notary Public in and for the State of New York.</p> <p>ELLEN GRAUER COURT REPORTING CO. LLC</p> <p>126 East 56th Street, Fifth Floor</p> <p>New York, New York 10022</p> <p>212-750-6434</p> <p>Ref: 102350</p>	<p>1 ----- I N D E X -----</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 DALIA GINGER MR. GRIVER 230</p> <p>4</p> <p>5</p> <p>6 ----- E X H I B I T S -----</p> <p>7 DALIA DESCRIPTION FOR I.D.</p> <p>8 Exhibit 16 Affirmation, signed 266</p> <p>9 11/19/2012</p> <p>10 Exhibit 17 Amendment, dated 279</p> <p>11 8/22/2008</p> <p>12 Exhibit 18 Amendment, dated 11/2008 292</p> <p>13 Exhibit 19 Memo, dated 8/2/2006 314</p> <p>14 Exhibit 20 Undated memorandum, 326</p> <p>15 Re: UCC sale</p> <p>16 Exhibit 21, Document package sent 327</p> <p>17 5/19/2009</p> <p>18 Exhibit 22 Verified complaint in 339</p> <p>19 Delaware action</p> <p>20 Exhibit 23 New York complaint 341</p> <p>21 Exhibit 24 Interpleader complaint 369</p> <p>22 Exhibit 25 Letter and promissory 370</p> <p>23 note dated 12/17/2007</p> <p>24 Exhibit 26 Document 399</p> <p>25</p>
Page 227	Page 229
<p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 ZEICHNER ELLMAN & KRAUSE LLP</p> <p>4 On Behalf of the Plaintiff,</p> <p>5 575 Lexington Avenue</p> <p>6 New York, New York 10022</p> <p>7 BY: YOAV GRIVER, Esq.</p> <p>8 BRYAN D. LEINBACH, Esq.</p> <p>9 212-223-0400</p> <p>10 ygriver@zeklaw.com</p> <p>11</p> <p>12</p> <p>13 PEDOWITZ & MEISTER LLP</p> <p>14 On Behalf of the Witness,</p> <p>15 570 Lexington Avenue</p> <p>16 New York, New York 10022</p> <p>17 BY: ROBERT A. MEISTER, Esq.</p> <p>18 212-403-7333</p> <p>19 robert.meister@pedowitzmeister.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 WALTER P. STASIUK, Wachtel Masyr & Missry</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ----- E X H I B I T S (Cont'd) -----</p> <p>2 DALIA DESCRIPTION FOR I.D.</p> <p>3 Exhibit 27 Settlement agreement 405</p> <p>4</p> <p>5</p> <p>6 (EXHIBITS RETAINED BY MR. GRIVER)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 230

1 (WHEREUPON, the witness was duly
2 affirmed.)
3 DALIA GINGER,
4 called as a witness herein, having been
5 previously duly affirmed and having testified,
6 was examined and testified further as follows:
7
8 EXAMINATION (Resumed)
9 BY MR. GRIVER:
10 Q. Mrs. Genger, you understand that you
11 have just been resworn in this deposition?
12 A. Uh-huh.
13 Q. Ms. Genger, I would ask that you
14 verbalize your answers. Don't go "uh-huh."
15 A. I am sorry. Yes. Because I saw that
16 you did that in my deposition, so I thought it is
17 allowed. But I will remember that.
18 Q. Okay. So let me ask you again --
19 A. Yes.
20 Q. Just let me ask you again for the
21 record. You understand --
22 A. Yes, I do understand.
23 MR. MEISTER: Wait until he finishes
24 his questions before you give the answer.
25 Otherwise, the court reporter --

Page 231

1 GINGER
2 THE WITNESS: Okay, Bob.
3 BY MR. GRIVER:
4 Q. Mrs. Genger, I place before you a copy
5 of your -- the original 15 exhibits to your
6 deposition, as well as the transcript of your
7 prior day of deposition on December 13, 2012.
8 Did you review your transcript before
9 today?
10 A. The transcript, you mean whatever that
11 I was deposed on?
12 Q. Yes.
13 A. I went through it. Yes.
14 Q. You read it?
15 A. Briefly, but not like thoroughly,
16 because I notice that there are some mistakes
17 that has -- I mean, not substantial maybe, but
18 like somebody said something, it wasn't the
19 person that said it, but I don't know exactly
20 what it is over here.
21 Q. Do you have any answers that you would
22 like to amend based on your review of the
23 transcript?
24 A. I have to read it more thoroughly, you
25 know, in order to answer that.

Page 232

1 GINGER
2 Q. But as we sit here today, you did not
3 in your review identify any questions that you
4 misanswered?
5 A. I cannot answer it because I didn't
6 read it thoroughly.
7 Q. But in whatever review you did, you did
8 not identify any questions that you need to
9 re-answer?
10 A. No.
11 Q. And have you reviewed the exhibits 1
12 through 15 before today?
13 A. No, I didn't. These are the exhibits?
14 Q. Yes.
15 A. No, I didn't. I mean, maybe some of
16 them I did.
17 Q. Did you meet with Mr. Meister or any
18 other counsel to prepare for today's deposition?
19 A. Yes. Yes, I did.
20 Q. Who did you meet with?
21 A. With Bob and his assistant.
22 Q. That's Marisa Warren?
23 A. What? Yes.
24 Q. And when did you meet with them?
25 A. It was yesterday. No. The day before.

Page 233

1 GINGER
2 Q. And for how long did you meet?
3 A. I think it was like two hours or so.
4 Q. Did Mr. Meister or his assistant
5 provide you with any documents?
6 A. They provided me with documents that I
7 should have had before, I think.
8 Q. And which documents were those?
9 A. I don't remember.
10 Q. But these are documents that you did
11 not think you had before?
12 A. I might have had. I don't remember.
13 MR. GRIVER: Robert, to the extent that
14 you provided Mrs. Genger with new documents, I
15 would ask that they be produced.
16 MR. MEISTER: I don't know what you
17 mean by "new documents."
18 MR. GRIVER: She just said there are
19 documents that she had not seen before. To the
20 extent any other documents you showed her have
21 not been produced in this action --
22 MR. MEISTER: Okay.
23 MR. GRIVER: -- I ask they be produced.
24 MR. MEISTER: For the record, I don't
25 think I showed her any documents that haven't

ONLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 234

1 GINGER
2 been produced to you.
3 **THE WITNESS:** No. The point is that --
4 okay.
5 **BY MR. GRIVER:**
6 Q. Mrs. Genger, if you can please look at
7 Dalia Exhibit 6. Did Sagi Genger prepare --
8 **A. Let me just get through it and see what**
9 **it is.**
10 Q. Okay.
11 **A. It is to Leah from me --**
12 **MR. MEISTER:** Don't.
13 **THE WITNESS:** I am just saying it
14 aloud.
15 **MR. MEISTER:** What you say aloud, the
16 court reporter has to write it down.
17 **THE WITNESS:** I'm sorry. It is so much
18 work. I'm sorry.
19 **BY THE WITNESS:**
20 **A. Okay.**
21 **BY MR. GRIVER:**
22 Q. Mrs. Genger, did Sagi Genger draft this
23 document that's been marked Exhibit 6?
24 **A. Not to my knowledge.**
25 Q. Did you draft it?

Page 235

1 GINGER
2 **A. No.**
3 **MR. MEISTER:** Objection. Asked and
4 answered.
5 **BY THE WITNESS:**
6 **A. I did not draft it.**
7 **BY MR. GRIVER:**
8 Q. Do you recall as we sit here today who
9 did?
10 **MR. MEISTER:** Objection. Asked and
11 answered.
12 **BY THE WITNESS:**
13 **A. No. As I said, the lawyer drafted it.**
14 **I don't know how to draft in a legal manner.**
15 **BY MR. GRIVER:**
16 Q. Was that lawyer David Parnes?
17 **A. I don't know.**
18 Q. You don't remember which lawyer?
19 **A. No.**
20 Q. You don't even remember if it was your
21 lawyer?
22 **A. I know it is a lawyer because I didn't**
23 **do it.**
24 Q. All right. Look at Exhibit 8, please.
25 **A. Exhibit 8.**

Page 236

1 GINGER
2 Q. Wait a second. One question.
3 You say that you know a lawyer did it
4 because?
5 **A. Because it is not my --**
6 Q. You didn't do it?
7 **A. It is not my style of writing.**
8 Q. How do you know that Sagi didn't
9 prepare this?
10 **A. How did I know that Sagi didn't prepare**
11 **it?**
12 Q. Yes.
13 **A. Because he is not a lawyer.**
14 Q. You think that only lawyers can prepare
15 a document like this?
16 **A. Yes.**
17 Q. Is that the only reason you don't
18 believe Sagi prepared the document marked as
19 Exhibit 6?
20 **A. Yes.**
21 Q. Look at Exhibit 8.
22 **A. Yeah.**
23 Q. Did Sagi Genger prepare this document?
24 **A. I have no idea.**
25 Q. Did Sagi Genger give you this document

Page 237

1 GINGER
2 for you to sign?
3 **A. I don't remember.**
4 Q. Look at Exhibit 6 again. Did Sagi
5 Genger give you Exhibit 6 for you to sign?
6 **A. I don't remember.**
7 Q. Mrs. Genger, if you could look, please,
8 at page 207 of your transcript, from the first
9 day of your deposition.
10 **A. Yeah. What do you want?**
11 Q. On page 207, at line 22, you call Orly
12 brainwashed already. Do you see that?
13 **A. Right.**
14 Q. What did you mean by that?
15 **A. That she was talked about, certain**
16 **subjects, over and over, and she was convinced**
17 **that whoever talked to her is telling her the**
18 **truth, and she should believe in it.**
19 Q. And the person who was talking to her
20 is Arie Genger?
21 **A. "Because Orly at this time was**
22 **brainwashed already, so I couldn't talk to her,**
23 **candidly, even though I did try."**
24 **I didn't mention Arie's name here in**
25 **this answer.**

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 238

1 GINGER
2 Q. But when you say that Orly was
3 brainwashed, brainwashed by whom?
4 A. By whoever talked to her.
5 Q. And who do you think that is?
6 A. Somebody that had interest in her
7 thinking whatever she was thinking.
8 Q. And who would that be?
9 A. Could be anyone. I mean, anyone that
10 has interest in whatever she answered.
11 Q. Okay. And when you said that she was
12 brainwashed, you did not mean that she was
13 brainwashed by Arie, is that what your testimony
14 is now?
15 A. No. I didn't say that.
16 Q. Okay. So who did you --
17 A. I said that it might be any person that
18 had interest for her to think a certain way or
19 believe in something that she believes in.
20 Q. So on that basis you could have been
21 brainwashed, for example, by Sagi Genger?
22 A. Might be.
23 Q. And is there any reason why you don't
24 want to identify Arie as a person who you
25 believed --

Page 239

1 GINGER
2 A. I didn't say I don't want to.
3 Q. Is that who you believed brainwashed
4 Orly?
5 A. That's the end of the question?
6 Q. Yes. I would like you to answer.
7 A. I don't know if it was Arie, or it
8 might have been her lawyer, one of her lawyers,
9 for example. I mean, there are certain people
10 that want her to believe in certain things. And
11 that's why I cannot say if it was Sagi or Arie,
12 or one of her lawyers.
13 Q. Okay. And what certain things did they
14 want her to believe?
15 A. I didn't read the whole thing, so I
16 don't know what we are talking about.
17 Q. Well, in this line of questioning, I
18 will represent to you, this is when you made the
19 decision not to let Arie Genger know about the
20 sale, about the UCC sale of the TPR shares, and
21 you decided not to let Orly know about the UCC
22 sale of the TPR shares?
23 A. I want to read this.
24 MR. MEISTER: Wait, wait.
25 THE WITNESS: I am not going to --

Page 240

1 GINGER
2 MR. MEISTER: Wait, Dalia. Let me put
3 my objection.
4 I object that that mischaracterizes the
5 testimony. I don't think this testimony that she
6 made a decision not to tell Arie --
7 BY MR. GRIVER:
8 Q. Well, you did not tell Arie about the
9 UCC sale, did you?
10 A. That's true. That's what I said.
11 Q. And why did you not tell Arie about the
12 UCC sale?
13 A. Because I had no interest to tell him.
14 Q. Why?
15 A. Because it is not my role to tell him
16 and inform him about the UCC sale.
17 Q. Why isn't it your role to tell him
18 about the UCC sale?
19 A. I have many things that are not my
20 role. I mean, should I inform him about other
21 things that happened? No.
22 Q. Did you know at the time that Arie
23 Genger had an interest in obtaining the TPR
24 shares?
25 A. No.

Page 241

1 GINGER
2 Q. You didn't think that at all?
3 A. How should I know? He never
4 communicated with me.
5 Q. You didn't suspect that at all, that he
6 might be interested in obtaining shares of his
7 family company?
8 MR. MEISTER: Put it on the record.
9 Mrs. Genger, please wait until
10 Mr. Griver finishes --
11 THE WITNESS: You are right. You are
12 right. I am sorry.
13 MR. GRIVER: Can you read my question
14 back, please.
15 (WHEREUPON, the record was read by
16 the reporter as requested.)
17 BY THE WITNESS:
18 A. That was the question?
19 BY MR. GRIVER:
20 Q. Yes.
21 A. No.
22 Q. That thought never crossed your mind?
23 A. No.
24 Q. What about Orly -- strike that.
25 Did you tell Orly about the UCC sale

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 242

1 GINGER
2 before it happened?
3 A. We went over it. No, I didn't tell
4 her.
5 Q. Okay. Why didn't you tell Orly?
6 MR. MEISTER: Objection. Asked and
7 answered.
8 BY THE WITNESS:
9 A. Because you asked me that.
10 BY MR. GRIVER:
11 Q. Yes.
12 A. And I did answer, and I will give you
13 the same answer.
14 Q. By all means.
15 A. The answer is that there was no way
16 that the trust could fight any -- had no means to
17 buy or compete in the auction. That's one of the
18 reasons that I didn't tell her.
19 And, secondly, I don't think it is one
20 of my roles to tell her about the auction. The
21 thing is that TPR went through legal procedures
22 in order to go through the auction. They did
23 follow the procedure, and, unfortunately, the
24 results were what they were, I mean, whatever
25 they were.

Page 243

1 GINGER
2 Q. I am asking you, Mrs. Genger --
3 A. Yes.
4 Q. -- it never crossed your mind that this
5 might be something that Orly would be interested
6 in, that her shares --
7 A. She never conveyed to me any desires or
8 things that she wants or doesn't want. She
9 didn't communicate with me. I mean, I am her
10 mother, and she knows that I am her trustee, too.
11 So she could have picked up the phone and tell
12 me, "Mommy, or my trustee, I am not interested
13 in," or "I want to participate in this auction."
14 She didn't do that.
15 Q. Okay. And you never thought to apprise
16 her? You never thought to tell her about it?
17 A. No. Because if it would have been
18 important enough for her, she would pick up the
19 phone and tell me.
20 Q. Okay. And how would Orly know about
21 the auction in order to tell you?
22 A. She -- there was a procedure. She
23 should have been aware of the procedure. Legal
24 procedure.
25 Q. And what is the legal procedure?

Page 244

1 GINGER
2 A. To advertise this in -- and I think
3 that was in the New York Post.
4 Q. Right. And there was no requirement
5 you believe for the -- for TPR to apprise you as
6 the trustee of the upcoming sale?
7 A. Again, who do you -- repeat the
8 question.
9 Q. You don't believe that there was a
10 requirement for TPR to apprise you as trustee of
11 the sale?
12 MR. MEISTER: Objection. Calls for a
13 legal conclusion.
14 BY THE WITNESS:
15 A. That TPR?
16 BY MR. GRIVER:
17 Q. Yes.
18 A. Requires me? Why should TPR require me
19 to do anything? What my role is in TPR? I am
20 the trustee of Orly trust.
21 Q. Do you believe that TPR had a
22 responsibility to tell you --
23 A. I have no idea what TPR's
24 responsibilities are.
25 MR. MEISTER: Dalia, let him finish the

Page 245

1 GINGER
2 question.
3 BY THE WITNESS:
4 A. I have no idea what the
5 responsibilities are.
6 BY MR. GRIVER:
7 Q. Did it ever occur to you that perhaps
8 Orly might be able to find financing in order to
9 show up at the UCC sale?
10 A. No, it never occurred to me.
11 Q. Did you ever seek financing for the
12 trust?
13 A. I said that I did entertain, I did --
14 no. Actually, no. That was another question
15 that you asked me. Ask me again. I am sorry.
16 Q. Did you seek any financing in order to
17 be able to appear at the UCC sale and maintain
18 control of the TPR shares?
19 A. No.
20 Q. Did you talk to any bank?
21 MR. MEISTER: About that?
22 THE WITNESS: Yeah.
23 BY MR. GRIVER:
24 Q. Did you talk to any bank about the fact
25 that there was a UCC sale and you would like to

Page 246

1 GINGER
2 show up to bid?
3 **A. No, I did not talk to any bank.**
4 Q. Any financing source of any kind?
5 **A. No. No. No.**
6 Q. Any friends?
7 **A. No. I didn't.**
8 Q. Okay. So you just looked at how much
9 money the Orly Genger trust had on the account?
10 **A. Yes.**
11 Q. And said, "Well, that's less than 4
12 million so I am done;" is that correct?
13 **A. More or less. Yes.**
14 Q. And you said, "I am not going to tell
15 Arie," correct?
16 **MR. MEISTER:** Objection.
17 **BY THE WITNESS:**
18 **A. No, I didn't say that.**
19 **BY MR. GRIVER:**
20 Q. You decided that you were not going to
21 tell Arie; isn't that correct?
22 **MR. MEISTER:** Objection.
23 **BY THE WITNESS:**
24 **A. I didn't think --**
25 **BY MR. GRIVER:**

Page 247

1 GINGER
2 Q. Yes or no.
3 **A. -- it is my role.**
4 Q. So you decided it wasn't your role, so
5 you weren't going to tell Arie, correct?
6 **A. I decided that I don't have to notify**
7 **anyone about the auction, okay.**
8 Q. Did you --
9 **A. Including Arie.**
10 Q. Did you talk to a lawyer in your
11 capacity as trustee of the Orly Genger trust
12 about stopping the sale?
13 **MR. MEISTER:** Objection. This was all
14 gone over at the prior deposition.
15 Wait a minute, wait a minute, wait a
16 minute.
17 **THE WITNESS:** I am not going to sit
18 here the whole day. I can't.
19 **MR. MEISTER:** Dalia, please.
20 **THE WITNESS:** I am not 20 years old. I
21 can't --
22 **MR. MEISTER:** Dalia, please don't
23 interrupt me.
24 I object to you asking the same
25 questions. If you don't have fresh questions,

Page 248

1 GINGER
2 then I will consider the deposition --
3 **MR. GRIVER:** I most certainly do, and I
4 have a reason for asking it, and thank you very
5 much. From now on, no speaking objections. Just
6 make your objection and be done.
7 **THE WITNESS:** Okay.
8 **BY MR. GRIVER:**
9 Q. As for you, Mrs. Genger, did you talk
10 to a lawyer about trying to stop the sale; yes or
11 no?
12 **MR. MEISTER:** Objection. Asked and
13 answered.
14 **BY THE WITNESS:**
15 **A. What was the question again?**
16 **BY MR. GRIVER:**
17 Q. Did you talk to a lawyer about trying
18 to stop the UCC sale?
19 **A. I don't remember.**
20 Q. You are not -- are you relying on
21 advice of counsel to protect your actions as
22 trustee in not trying to stop the UCC sale?
23 **MR. MEISTER:** Objection. Calls for a
24 legal conclusion. Let's move on. You have
25 covered this.

Page 249

1 GINGER
2 Dalia, wait a minute.
3 You have covered all of this at the
4 beginning of the first session of the deposition.
5 We are not going to have this first session of
6 the deposition repeated.
7 **THE WITNESS:** Again.
8 **MR. MEISTER:** So if you would like to
9 move on to fresh material --
10 **MR. GRIVER:** Bob, it is not being
11 repeated. What I am doing is laying a foundation
12 in order to find out if she's relying on advice
13 of counsel. If she is, then I will get that
14 advice.
15 **MR. MEISTER:** You can put it --
16 **MR. GRIVER:** I will get that advice
17 from her right now.
18 **MR. MEISTER:** You had questions on
19 this. She told you her answers.
20 **MR. GRIVER:** And we had subsequent --
21 **MR. MEISTER:** And you --
22 **MR. GRIVER:** -- subsequent
23 communications where you said, you know, make
24 your case and bring it to the Court. So I am
25 going --

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 250

1 GINGER
2 **MR. MEISTER:** I don't understand what
3 you are talking about. Do you want me to find
4 the section where you asked this?
5 **MR. GRIVER:** I am not talking to you.
6 **MR. MEISTER:** No, no. I am sorry,
7 Mr. Griver.
8 **MR. GRIVER:** Find me the question where
9 I asked her this question, and you can do that,
10 but she is going to answer it in the meantime.
11 **MR. MEISTER:** No, she is not. Wait a
12 minute.
13 **BY MR. GRIVER:**
14 Q. Mrs. Genger, are you relying on advice
15 of counsel --
16 A. I am going to get up and walk away. I
17 can't take this. I can't take this.
18 Q. Mrs. Genger, it's a simple question.
19 Are you relying on advice of counsel --
20 A. Usually, I do.
21 Q. -- to shield your actions in not
22 attempting to stop the UCC sale?
23 A. Usually when I decide something, in
24 general, I take the advice and I consult with my
25 lawyer, okay.

Page 251

1 GINGER
2 Q. I am not talking about generally. I am
3 talking specifically with regard to your decision
4 not to attempt to stop the UCC sale.
5 A. So specifically I told you then that I
6 don't remember.
7 Q. Okay. So in that event you are not
8 relying on advice of counsel?
9 A. I didn't say that.
10 **MR. MEISTER:** Objection.
11 **BY THE WITNESS:**
12 A. I said I don't remember. I might have.
13 **BY MR. GRIVER:**
14 Q. Okay. But as we sit here today, you
15 don't remember what that advice was? As we sit
16 here today, you don't remember if you were given
17 advice?
18 A. No.
19 Q. Or you don't remember what that advice
20 was?
21 A. I didn't say that. I said I don't
22 remember if I asked for advice. I didn't say
23 that I didn't get any advice, or which advice did
24 I get.
25 **MR. GRIVER:** Read back her last answer.

Page 252

1 GINGER
2 (WHEREUPON, the record was read by
3 the reporter as requested.)
4 **THE WITNESS:** Thank you.
5 **MR. GRIVER:** Read that again, please.
6 (WHEREUPON, the record was read by
7 the reporter as requested.)
8 **BY MR. GRIVER:**
9 Q. Did you get advice regarding the UCC
10 sale?
11 **MR. MEISTER:** Objection. Asked and
12 answered.
13 **BY THE WITNESS:**
14 A. You just asked me. I mean, really, are
15 we going to -- I mean, this costs me money, you
16 know. This costs me money. If you are going to
17 ask me ten times the same question, I am giving
18 you ten times the same answer, I am not going to
19 pay my lawyer, and I am going to go to court. I
20 mean, this is -- you are harassing me.
21 **BY MR. GRIVER:**
22 Q. Mrs. Genger, calm down. If you
23 would --
24 A. I would like to calm down.
25 Q. If you would provide yes or no answers,

Page 253

1 GINGER
2 it will be helpful. If you quit changing your
3 answer, it would also be helpful.
4 A. I am not changing. If you read my
5 answers, you would see that I am very consistent
6 with my answers.
7 **MR. GRIVER:** Read her last answer.
8 And, Mrs. Genger, I would like you to
9 pay attention to where you stated something that
10 makes it unclear whether or not you actually got
11 advice.
12 (WHEREUPON, the record was read by
13 the reporter as requested.)
14 **MR. MEISTER:** And I'm going to note for
15 the record, the first session of the deposition,
16 at page 191, after Mr. Griver asked whether she
17 consulted with a lawyer, he asked the question at
18 line 2: "What was his advice." And then after
19 dialogue, there was an answer at line 16, quote:
20 "Okay. We weighed the options we had and we
21 concluded there's nothing I can do to stop Sagi
22 from, you know, doing whatever he did with the
23 auction."
24 And it goes on. So this topic was
25 covered in extenso.

Page 254

1 GINGER
2 **BY MR. GRIVER:**
3 Q. What options did you weigh? If you are
4 going to go with that testimony, that you
5 actually did seek a lawyer's advice, then I will
6 ask you, what options did you weigh?
7 **A. I don't remember. I don't remember.**
8 Q. Okay. What actions did you take as a
9 result of that advice?
10 **A. Of what?**
11 Q. Did you speak to anyone about trying to
12 stop the sale after you spoke to your attorney?
13 **THE WITNESS:** Can you repeat the
14 question.
15 (WHEREUPON, the record was read by
16 the reporter as requested.)
17 **BY THE WITNESS:**
18 **A. No.**
19 **BY MR. GRIVER:**
20 Q. Okay. On page 208 of your transcript,
21 if you could read, please, pages --
22 **MR. MEISTER:** Just a second.
23 **BY THE WITNESS:**
24 **A. We have to get to the right page here.**
25 **BY MR. GRIVER:**

Page 255

1 GINGER
2 Q. Page 208, lines 15 through 20.
3 **A. Sorry, what line you said?**
4 **MR. MEISTER:** 15.
5 **BY MR. GRIVER:**
6 Q. Lines 15 through 20.
7 **MR. MEISTER:** You have to go back to
8 the question, though.
9 **BY THE WITNESS:**
10 **A. Question was, can you -- from where?**
11 **No, the question is --**
12 **MR. MEISTER:** The question is in line
13 3.
14 **BY THE WITNESS:**
15 **A. "Question: If you told Orly about the**
16 **sale, she would tell her father. That didn't**
17 **occur to you at all?"**
18 **MR. MEISTER:** And then the answer is at
19 line 15.
20 **BY THE WITNESS:**
21 **A. "Answer: I didn't think about it at**
22 **the time, but I am telling you frankly, I didn't**
23 **want Arie to be involved in this auction."**
24 **Okay.**
25 **BY MR. GRIVER:**

Page 256

1 GINGER
2 Q. And you continue on and say: "Because
3 I know my husband." Do you see that?
4 **A. Yes, I do know my husband.**
5 Q. What did you mean by that?
6 **A. My ex-husband.**
7 Q. Okay. Your ex-husband. Yes.
8 **A. His character.**
9 Q. Okay. What was it about your
10 ex-husband Arie Genger that made you not want him
11 to be involved in the auction?
12 **A. He is a dishonest person. That's my**
13 **conclusion.**
14 Q. Okay. And how did you believe that
15 that dishonesty might affect the auction? What
16 was your --
17 **A. It will affect the results of the**
18 **auction in a way that will not benefit Orly.**
19 Q. By him buying the TPR shares?
20 **A. I don't know if he would buy or not.**
21 **How should I know? Hypothetically, I cannot**
22 **answer you. It is a hypothetical question.**
23 Q. Well, you said you didn't want him to
24 be involved. So I am asking you, if Arie Genger
25 had bought the TPR shares --

Page 257

1 GINGER
2 **A. If, if, if. I don't know what**
3 **happened.**
4 Q. One second.
5 **A. If, if, if.**
6 Q. If -- let's explore all the options.
7 Either Arie could show up and not buy
8 the TPR shares --
9 **A. I am not answering hypothetical**
10 **questions, okay, because it is a hypothetical**
11 **answer. So I don't know. I don't know what**
12 **would happen.**
13 Q. You considered what might happen if
14 Arie Genger bid in deciding not to tell him about
15 the UCC sale, so I am asking you --
16 **MR. MEISTER:** Objection. That's not
17 her testimony. The testimony that you just asked
18 her to read, was, quote: "I didn't think about
19 it at the time," closed quote. Okay. So don't
20 mischaracterize her prior testimony.
21 **BY MR. GRIVER:**
22 Q. Mrs. Genger, how could Arie's presence
23 at the UCC sale harm the Orly Genger trust?
24 **MR. MEISTER:** Objection.
25 **BY MR. GRIVER:**

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 258

1 GINGER
2 Q. As trustee, please answer the question.
3 A. **First of all, I said at the time I**
4 **didn't think about involvement.**
5 Q. Please answer my question. Please just
6 answer my question.
7 MR. GRIVER: Read back the question,
8 please.
9 BY THE WITNESS:
10 A. I don't want my ex-husband to be
11 involved in finances that I am responsible for
12 being a trustee. I don't want him -- I didn't
13 want him to be involved in anything financial
14 that I am also responsible, things that has to do
15 with Orly, because I don't trust him. Okay?
16 Q. How would Arie's participation in
17 the --
18 A. He is a dishonest person. I am cutting
19 you short because I told you that already.
20 Q. Okay. Other than your belief in his
21 dishonesty, how is his buying the TPR shares for
22 more money --
23 A. No other ways.
24 Q. -- for more money than TPR was willing
25 to buy the TPR shares, how would that harm the

Page 259

1 GINGER
2 trust?
3 MR. MEISTER: Objection.
4 BY THE WITNESS:
5 A. As I said, we discussed it before,
6 okay. How would you know that I -- are you
7 assuming that Arie would buy the shares at a
8 higher price than whoever bought the shares?
9 BY MR. GRIVER:
10 Q. If he had --
11 A. If. If he.
12 Q. Yes.
13 A. If, if, if. But if. I don't know if.
14 Q. Mrs. Genger --
15 A. That's what happened.
16 Q. -- as trustee I am asking you --
17 A. Okay.
18 Q. -- if Arie Genger had paid more money
19 than TPR did for the TPR shares, how would that
20 have harmed the Orly Genger trust?
21 A. You're really trying my patience.
22 Q. I just want an answer to that question,
23 please.
24 A. I said before that I would stay away
25 from any financial involvement of Arie that has

Page 260

1 GINGER
2 to do with Orly's financial affairs. That's my
3 answer.
4 Q. Okay.
5 A. If he paid more or less or much more,
6 it doesn't matter. I just don't trust the guy.
7 And I am the trustee and I made this decision,
8 okay, because I happen to know the guy. It is
9 not a stranger. It is somebody that I lived with
10 like 35 years. So I know with whom I am dealing,
11 okay? Is this clear?
12 Q. And, again, I am going to ask you --
13 A. Again?
14 Q. Excuse me. I don't understand. How
15 does Arie Genger's honesty, how does that taint
16 any moneys that he would pay for shares?
17 MR. MEISTER: Objection.
18 BY MR. GRIVER:
19 Q. I am just --
20 A. Because that's not the end of the
21 story, you know. There's things that come after
22 buying the shares.
23 Q. Such as?
24 A. Consequences --
25 Q. Such as?

Page 261

1 GINGER
2 A. -- of something.
3 Q. Such as?
4 A. I don't know. We are talking if. I
5 don't know. If. If he would have paid. If he
6 would have paid, then I would discuss with you,
7 but --
8 Q. If he had paid \$8 million for the TPR
9 shares, what future consequences would have been
10 negative for the trust?
11 MR. MEISTER: Objection.
12 BY MR. GRIVER:
13 Q. Mrs. Genger, you are trustee. You
14 swore that you would protect the trust. You
15 swore that you are able to protect the trust. I
16 am asking a simple question.
17 I am asking you what negative
18 consequences do you believe would have resulted
19 from Arie Genger paying more money for the TPR
20 shares than TPR did?
21 MR. MEISTER: Objection.
22 BY THE WITNESS:
23 A. You are very naive, you know. You only
24 just want to spend time, just spending time
25 asking questions around and around the same

Page 262

1 **GENGER**
 2 subject, okay.
 3 **BY MR. GRIVER:**
 4 Q. Please answer my question.
 5 **A. And it is a fact that Arie was not able**
 6 **to get his hand on Orly's shares, okay. It is**
 7 **very disappointing to him, and to you, who you**
 8 **are being paid by Arie, okay. So that's why I**
 9 **think that your reputation is a little bit**
 10 **tainted in objectivity, is tainted, when you ask**
 11 **me this questions, okay.**
 12 Q. Perhaps --
 13 **MR. MEISTER:** Can we take a break for a
 14 minute, please.
 15 **BY MR. GRIVER:**
 16 Q. Perhaps I am brainwashed, too, but I
 17 would ask that you --
 18 **MR. MEISTER:** Mr. Griver, can we take a
 19 break for a minute, please.
 20 **MR. GRIVER:** I would ask that she
 21 answer my question, and then she can take a
 22 break. Absolutely.
 23 But please repeat my question for the
 24 record. Type it out in the record, please.
 25 (WHEREUPON, the record was read by

Page 263

1 **GENGER**
 2 the reporter as requested, pg 261,
 3 lines 13-20, as follows:
 4 **"QUESTION:** Mrs. Genger, you are
 5 trustee. You swore that you would
 6 protect the trust. You swore that
 7 you are able to protect the trust.
 8 I am asking a simple question. I
 9 am asking you what negative
 10 consequences do you believe would
 11 have resulted from Arie Genger
 12 paying more money for the TPR
 13 shares than TPR did?"
 14 **MR. MEISTER:** Note my objection.
 15 **BY THE WITNESS:**
 16 **A. So where are we standing now?**
 17 **BY MR. GRIVER:**
 18 Q. I am waiting for you to answer the
 19 question.
 20 **A. What? This is the question that you**
 21 **asked like 20 minutes ago?**
 22 Q. The one that you have not answered,
 23 that she repeated for you, for your convenience.
 24 Yes. Would you like her to repeat it again?
 25 **A. Yes.**

Page 264

1 **GENGER**
 2 **MR. GRIVER:** Madam Court Reporter,
 3 please.
 4 (WHEREUPON, the record was read by
 5 the reporter as requested, page
 6 261, lines 13-20.)
 7 **MR. MEISTER:** Objection.
 8 **BY THE WITNESS:**
 9 **A. What negative consequences, you asked?**
 10 **BY MR. GRIVER:**
 11 Q. Yes.
 12 **A. The negative consequences, I cannot**
 13 **answer this question because I don't believe that**
 14 **your question comes in good faith to protect**
 15 **Orly's interest. Because as we sit here, as we**
 16 **sit here, your mind is also thinking about, I**
 17 **mean, Arie's interest. Specifically you are**
 18 **asking about Arie's interest over and over and**
 19 **over, okay. So it is obvious that somebody is**
 20 **pushing Arie's name here all the time, okay.**
 21 **And that's why I don't feel comfortable**
 22 **to answer you questions that are not objectively**
 23 **being put forward as -- I have to find the word.**
 24 **As pushing Orly's benefit in this kind of auction**
 25 **or sale.**

Page 265

1 **GENGER**
 2 Q. As an attorney for Orly and the Orly
 3 trust, I believe that if someone had come into
 4 that auction and paid more money, it would have
 5 benefited the trust because the trust would have
 6 had more money.
 7 **A. If somebody would have come.**
 8 **MR. MEISTER:** Objection.
 9 **BY MR. GRIVER:**
 10 Q. That's why I am asking. So I would ask
 11 that you please answer the question.
 12 **A. I am answering.**
 13 Q. As trustee, what negative consequences
 14 did you believe might result if Arie Genger had
 15 paid more money for the TPR shares than TPR?
 16 **MR. MEISTER:** Excuse me. Objection.
 17 **BY THE WITNESS:**
 18 **A. Arie could have come if he wanted to.**
 19 **BY MR. GRIVER:**
 20 Q. He --
 21 **A. He could have come if he wanted to. If**
 22 **he was so eager, he should have read the**
 23 **newspapers every day and come. But he didn't do**
 24 **it. So he didn't come. So my role is to go and**
 25 **call him and tell him?**

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 266

1 GINGER
2 Q. Your role is not to call him --
3 A. I could have called also another
4 millionaire or billionaire and asked him to come
5 and participate, but I didn't do it, because I am
6 not going to sit here every day and make phone
7 calls to all the millionaires in the country.
8 MR. MEISTER: Let the record reflect
9 that in part of her answer where she said, "so my
10 role is to call him and tell him to come here,"
11 she was -- her inflection indicated she was
12 asking a question. It was not a declarative
13 statement.
14 Okay. Can we take our break, please.
15 MR. GRIVER: Sure. Let me have this
16 marked as Exhibit 16.
17 (Dalia Exhibit 16, affirmation,
18 signed 11/19/2012, marked.)
19 MR. MEISTER: Take a break.
20 (WHEREUPON, a recess was had from
21 11:19 a.m. to 11:24 a.m.)
22 BY MR. GRIVER:
23 Q. You are aware that at the time that
24 Sagi Genger on behalf of TPR began taking steps
25 to foreclose on the note, that Orly was seeking

Page 267

1 GINGER
2 to have you removed as trustee?
3 A. Right.
4 Q. And you know that before you were
5 appointed at trustee, Orly had been in conflict
6 with Leah Fang, the previous trustee?
7 A. Yes.
8 Q. Okay. And you testified, I believe
9 previously, that you never -- that you don't know
10 what exactly the conflict was, and you had not
11 sought to understand what that conflict was?
12 A. Right.
13 Q. But you knew, did you not, from the
14 conflict with Leah Fang and from Orly's actions
15 against you that Orly was, in fact, deeply
16 concerned about her trust and her trust assets?
17 MR. MEISTER: Object to the form of the
18 question. I think you misspoke, Mr. Griver.
19 BY THE WITNESS:
20 A. Yes. Can you repeat? Did Orly what?
21 BY MR. GRIVER:
22 Q. Did you not understand from Orly's
23 actions with regard to Leah Fang and with regard
24 to you that Orly was concerned about protection
25 of the trust --

Page 268

1 GINGER
2 A. Concerned about protection of?
3 Q. Concerned about the protection of her
4 trust assets?
5 A. Concerned? You mean -- did I hear that
6 right?
7 Q. Yes.
8 Did you think that Orly was concerned
9 about her trust assets?
10 A. No, I was not aware of that.
11 Q. So did you believe that Orly did not
12 care what happened to the assets of her trust?
13 A. I am sure she, like any normal person,
14 she is concerned about her assets.
15 Q. Okay. So knowing that like any other
16 normal person she would be concerned about her
17 trust assets, why didn't you tell her, by phone,
18 by mail, by any means you chose --
19 A. Yeah.
20 Q. -- about the fact that those assets
21 were about to be sold?
22 A. Why --
23 MR. MEISTER: Objection. Assumes a
24 fact not in evidence.
25 BY THE WITNESS:

Page 269

1 GINGER
2 A. Is there a connection between the
3 question --
4 MR. MEISTER: And objection to the
5 form.
6 BY THE WITNESS:
7 A. Is there -- I don't understand. Is
8 there a connection between the question that you
9 asked me now to the question before that she's
10 concerned about her assets, and now you are
11 asking me what?
12 BY MR. GRIVER:
13 Q. If you assumed that Orly, like any
14 normal person, was concerned about her trust
15 assets, why did you not provide the courtesy of
16 calling up and letting her know that TPR was
17 foreclosing on some of those assets?
18 MR. MEISTER: Objection. Assumes a
19 fact not in evidence. Objection to form. And
20 objection to this whole line has been gone over
21 and over and over.
22 BY THE WITNESS:
23 A. My answer is, if Orly was so concerned,
24 she could have given me a phone call. I am her
25 mother, and she knows my number.

Page 270

1 GINGER
2 BY MR. GRIVER:
3 Q. And as her mother you didn't think you
4 should call up and let your daughter know?
5 MR. MEISTER: Objection. Asked and
6 answered numerous times.
7 BY THE WITNESS:
8 A. How many times? I mean, really, you
9 know.
10 BY MR. GRIVER:
11 Q. Answer the question.
12 A. So I told you, if she was so concerned
13 that I am doing something wrong, when she was
14 very concerned she did write me a letter, okay.
15 Apparently this time she didn't find the time or
16 the necessity to write me any letter concerning
17 me selling the shares to the Trump Group, for
18 example. Then she did, now she didn't. Why?
19 Because she was concerned less? Or she didn't
20 have the time? I have no idea.
21 Q. As her mother, don't you think you
22 should have called on the phone and let her know
23 about the sale?
24 MR. MEISTER: Objection. Asked and
25 answered.

Page 271

1 GINGER
2 BY MR. GRIVER:
3 Q. Just yes or no.
4 A. What? The same question that we --
5 Q. Yes. Until you give me an answer, yes.
6 As her mother, don't you think you
7 should have picked up the phone and told her
8 about the foreclosing on the TPR assets?
9 A. No.
10 MR. MEISTER: Objection. Asked and
11 answered.
12 BY MR. GRIVER:
13 Q. Okay. Take a look at what's been
14 marked as Exhibit 16, please. For the record,
15 Exhibit 16 is an affirmation in support of the
16 motion to dismiss further amended petition signed
17 by Robert Meister on or about November 19, 2012.
18 Mrs. Genger, did you review this
19 document before it was submitted on behalf of --
20 purportedly on behalf of the Orly Genger trust
21 and you as trustee?
22 MR. MEISTER: First of all, I note that
23 this is a document submitted in a different
24 litigation. Secondly, it was not submitted on
25 behalf of the Orly Genger trust. So it is

Page 272

1 GINGER
2 mischaracterizing it. Submitted on behalf of
3 Mrs. Genger, as trustee, in response to a
4 petition, third amended petition to remove her as
5 trustee.
6 I further note that this is not a
7 deposition in that action.
8 MR. GRIVER: And I will simply note
9 that one of the actions against Mrs. Genger in
10 this case is for fraud in her actions as trustee.
11 THE WITNESS: Fraud?
12 MR. GRIVER: Fraud. That's correct.
13 MR. MEISTER: Actually, I think --
14 THE WITNESS: Get to the point.
15 MR. MEISTER: Actually, it is not
16 interactions as trustee. What is left in this
17 case after the trustee claims were dismissed
18 by -- in the very first motion, is an allegation
19 that Mrs. Genger colluded and committed fraud
20 individually, colluded with Sagi Genger. I've
21 noted also that none of these questions seem to
22 relate to what is left in this case.
23 MR. GRIVER: That's not true at all,
24 but thank you for that, Robert.
25 BY MR. GRIVER:

Page 273

1 GINGER
2 Q. If you could look at paragraph 8.
3 Actually, paragraph 21 says it better. Paragraph
4 21.
5 A. 21. Okay.
6 MR. MEISTER: Page 12.
7 BY THE WITNESS:
8 A. Okay. So what part of 21?
9 BY MR. GRIVER:
10 Q. Yes. But first I will ask you, because
11 I don't believe I received an answer to my
12 question, did you review this document before it
13 was submitted in the --
14 A. I don't remember.
15 Q. -- action?
16 Okay. If you can look at paragraph 21,
17 particularly the second sentence.
18 A. When you say "the note," which note do
19 you mean? The D&K note?
20 Q. The D&K note, yes.
21 A. (Witness reading document).
22 Yes, I remember that.
23 Q. And --
24 A. I was -- yeah.
25 MR. MEISTER: Wait until there's a

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 274

1 GINGER
2 question.
3 BY MR. GRIVER:
4 Q. So does it -- is it your position
5 that --
6 A. I am sorry. What is TAP?
7 Q. Third amended petition.
8 A. What?
9 Q. Third amended petition.
10 A. (Witness reading document).
11 Okay. I read it.
12 Q. Are you taking the position that you
13 could not tell Orly Genger about the notice of
14 default of the D&K note which was dated August
15 31, 2008 because you had been instructed by
16 Surrogate Roth to take no action?
17 A. Actually, yes. I remember that I
18 was -- I was notified that I shouldn't do
19 anything because Orly asked from the judge that I
20 shouldn't take any action.
21 Q. And so because of Surrogate Roth's
22 order, you took no action --
23 A. I don't remember it because of this or
24 because of that. But I knew that I couldn't take
25 any action. I don't remember.

Page 275

1 GINGER
2 Q. You couldn't take any action because of
3 Surrogate Roth's order?
4 A. It says so.
5 Q. I know that's what Mr. Meister claims.
6 I am asking you as trustee, did you believe that
7 Surrogate Roth's order required you to take no
8 action --
9 A. Yes. I believe so.
10 Q. Excuse me. Let me finish.
11 So Surrogate Roth's order required you
12 to take no action of any kind as --
13 A. I was not allowed --
14 Q. -- as trustee?
15 A. Yeah.
16 Q. You were not allowed?
17 A. Yeah.
18 Q. You couldn't even call your daughter
19 and tell her because of that, is that your
20 position, because Surrogate Roth told you to take
21 no action to harm the shares of the trust?
22 MR. MEISTER: Objection.
23 Mischaracterizes what Surrogate Roth said.
24 BY THE WITNESS:
25 A. So what's the question?

Page 276

1 GINGER
2 BY MR. GRIVER:
3 Q. Well, I will rephrase it.
4 So what was your understanding of
5 Surrogate Roth's impact on your ability to act?
6 A. That I don't have an ability to act.
7 Q. In any way?
8 A. She said not to act, so I would say in
9 any way. She didn't say in any way, but I
10 assumed that that's what she meant. Otherwise,
11 she would specify in which way I can take an
12 action.
13 Q. Okay.
14 A. I would assume.
15 Q. I am not asking you to assume,
16 Mrs. Genger.
17 A. I am not a lawyer. I don't know the
18 way these things are written.
19 Q. But as trustee, what was -- I'm asking
20 simply what your understanding was as trustee?
21 A. That I shouldn't take any action.
22 Q. And your understanding, did that
23 prevent you from even calling up your daughter
24 and letting her know about the sale?
25 A. Yeah.

Page 277

1 GINGER
2 Q. So your understanding is that Justice
3 Roth's order even prevented you from letting
4 people knowing about a sale? It was that broad,
5 correct?
6 A. I was instructed not to take any
7 action, and that's what I did. I didn't take any
8 action.
9 Q. And what was the basis for your
10 understanding that you could take no action?
11 A. What's the basis? Because the judge
12 said so.
13 Q. Okay. Any other basis?
14 A. Maybe, but I don't remember at the
15 moment.
16 Q. Did you discuss Justice Roth's --
17 excuse me.
18 Did you discuss Surrogate Roth's order
19 with Sagi Genger?
20 A. No.
21 Q. Now, Justice Roth issued the order we
22 have been discussing where you were not to take
23 any actions to affect the trust assets in March
24 of 2008; do you recall that?
25 A. Is this regarding to the Trump Group?

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

Page 278

1 GENDER
2 Q. No. This is in -- the Trump Group --
3 this is regarding to you --
4 A. Yes.
5 Q. -- not taking any action as trustee
6 because at the time Orly was seeking to remove
7 you as trustee because she did not believe that
8 you --
9 A. Okay. That I'm fraudulent and so and
10 so forth?
11 Q. No, just that you would not be a good
12 trustee. Just that you would not --
13 Mrs. Genger --
14 MR. MEISTER: Don't make jokes,
15 Mrs. Genger. This is -- anything you say on the
16 record --
17 MR. GRIVER: I don't think she was
18 joking.
19 BY MR. GRIVER:
20 Q. Mrs. Genger, were you joking?
21 A. Of course I was joking. Would I say
22 about myself that I am --
23 Q. Mrs. Genger --
24 A. -- fraudulent?
25 Q. -- then I ask you to just simply answer

Page 279

1 GENDER
2 the question, okay --
3 A. Okay. What is the question?
4 Q. -- because you are under oath.
5 Do you recall Surrogate Roth's
6 direction that no actions were to be taken by you
7 in reference to the trust assets, that that order
8 was issued on or about March 4 of 2008; do you
9 recall that?
10 A. I recall that there was something like
11 that, but the date, I am not sure about.
12 Q. I will represent to you that it was
13 March 4, 2008, and it lasted until January 1 of
14 2009.
15 A. Okay.
16 Q. So during that time, you were not
17 allowed to take any actions whatsoever, correct?
18 A. Okay.
19 MR. GRIVER: Did she answer?
20 THE COURT REPORTER: She said "okay."
21 MR. GRIVER: Okay. Let's have this
22 marked as 17.
23 (Dalia Exhibit 17, amendment,
24 dated 8/22/2008, marked.)
25 BY MR. GRIVER:

Page 280

1 GENDER
2 Q. Is that your signature, Mrs. Genger?
3 A. All right. Yes. But I have to
4 familiarize myself because, you know, I am not --
5 Q. Go ahead and do that. But is that your
6 signature on Exhibit 17?
7 A. Yes. I know, I know. I said I know.
8 But I have now to --
9 Q. Now that you have identified you as
10 having signed this document, go ahead and read
11 it.
12 A. Yes. Now I am reading it. And I am
13 trying to see to what we are talking here about.
14 Amending something.
15 Q. Okay. For the --
16 A. Paragraph 32. What is paragraph 32?
17 Q. Mrs. Genger, you can read it. If you
18 look at Exhibit 9 of your -- Exhibit 9, that's
19 the D&K restated and amended partnership
20 agreement.
21 A. Okay. I am just -- okay.
22 MR. MEISTER: Everything you say,
23 including, "I am turning to this," the reporter
24 has to write down.
25 THE WITNESS: She has to write it down.

Page 281

1 GENDER
2 I'm sorry.
3 MR. MEISTER: So don't say anything
4 except when Mr. Griver asks you a question and
5 then you answer.
6 THE WITNESS: Okay. I'm fine. Okay.
7 BY MR. GRIVER:
8 Q. For the record, Exhibit 17 is an
9 amendment on or about August 22, 2008 to the
10 amended and restated limited partnership
11 agreement of D&K Limited Partnership.
12 A. Paragraph 22? With authority of
13 general partners, this is what you mean? Page
14 11?
15 Q. Yeah.
16 A. What is it?
17 Q. Mrs. Genger, this is an amendment to
18 the D&K Limited Partnership agreement, to which
19 the Orly Genger trust was a partner. And this is
20 a change that took place in August of 2008 --
21 A. Yeah.
22 Q. -- during the time of Surrogate Roth's
23 order.
24 A. Order that what? That I shouldn't --
25 MR. MEISTER: Just wait for the

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 282

1 GINGER
2 question.
3 **THE WITNESS:** I don't -- no. I don't
4 get it. That's why I am talking.
5 **MR. MEISTER:** But don't talk -- if you
6 wait for the question, and then when the question
7 is over, and you can answer.
8 **BY MR. GRIVER:**
9 Q. Mrs. Genger, who drafted this
10 amendment?
11 A. I wouldn't know.
12 Q. Did Sagi Genger draft this amendment?
13 A. When I say I wouldn't know, it includes
14 Sagi, other lawyers. I wouldn't know. Somebody
15 drafted it. I didn't draft it.
16 Q. Did you have --
17 A. I did not draft it.
18 Q. Do you recall anything related to your
19 signing of this amendment?
20 A. I have to refresh my memory. I don't
21 remember.
22 Q. Well, I have given you an opportunity
23 to read the amendment. Does that refresh your
24 recollection as to the circumstances?
25 A. I need time to read it.

Page 283

1 GINGER
2 Q. Take it.
3 A. Okay. (Witness reading document).
4 **MR. GRIVER:** Let me have this marked as
5 18 while we're waiting.
6 **MR. MEISTER:** As far as the I know, the
7 only question is, have you signed Exhibit 17, and
8 you answered that, or he asked you if that's your
9 signature.
10 **BY THE WITNESS:**
11 A. What is the question?
12 **BY MR. GRIVER:**
13 Q. Do you recall the circumstances of you
14 signing this amendment?
15 A. The circumstances? You mean about what
16 was it, you mean?
17 Q. About what was it, when you signed it,
18 who was there when you signed it, anything.
19 A. I want to make sure that I am looking
20 at the right paragraph, because it says paragraph
21 22 is corrected to read so and so, right.
22 Q. Uh-huh.
23 A. So paragraph 22 --
24 Q. Is amended.
25 A. Right. And it is at page 11, right, is

Page 284

1 GINGER
2 what you mean? I want to make sure we are
3 looking at the same document.
4 Q. Page 11 through 12.
5 A. Okay. I am just trying to find the
6 exact -- the correcting number here, right? The
7 number of shares, I am trying to see what it is,
8 and it is probably something that I was --
9 Q. If you look at the end of 22-A, the
10 very first line, very last thing is --
11 A. 22-A?
12 Q. Very last thing is 102.80.
13 A. 22-A. Okay. So there is a correction
14 to the percentage, I guess.
15 Q. Okay.
16 A. Because here it says percentage, and
17 here it says shares.
18 Q. There's also a relaxing or termination
19 of restrictions, right, language was added at the
20 end, do you see that, in the amendment?
21 A. At the end --
22 Q. If you look at Exhibit 17, you will see
23 that additional language was added at its end; do
24 you see that?
25 A. Certain restriction might be relaxed.

Page 285

1 GINGER
2 Okay.
3 Q. Do you recall -- do you have any
4 recollection of the circumstances of the signing
5 of this amendment?
6 A. No, I don't remember that.
7 Q. Okay. Was this change in the
8 amendment, was this your idea or somebody else's
9 idea?
10 A. I'm sorry, I didn't understand.
11 Q. This amendment that's been marked as
12 Exhibit 17, was this your idea or somebody else's
13 idea?
14 A. Idea, you said, you mean?
15 Q. Yes.
16 A. I don't know whose idea it was.
17 Q. You don't even remember if it was your
18 idea; is that your testimony?
19 A. I don't remember whose idea it was,
20 that's what I am saying.
21 Q. Was it your idea?
22 A. I said I don't remember so I -- it
23 might be mine, it might be somebody else. I
24 don't remember.
25 Q. So at the time when you were -- at the

Page 286

1 GINGER
2 time that you were instructed by Surrogate Roth
3 not to take any action, it could have been your
4 idea to amend the D&K agreement?
5 **A. I said I don't remember. I didn't say**
6 **that I did.**
7 Q. So it could have been?
8 **A. I said I don't remember.**
9 Q. So it is a possibility, correct?
10 **A. If you want to hang on possibilities,**
11 **hang on possibilities.**
12 **MR. MEISTER:** Objection. Calls for a
13 hypothetical.
14 **THE WITNESS:** Hypothetical.
15 **BY MR. GRIVER:**
16 Q. If you can't remember whether or not it
17 was your idea, then it is possible it is your
18 idea, correct?
19 **MR. MEISTER:** Mr. Griver, stop
20 badgering the witness. She said she doesn't
21 matter.
22 **THE WITNESS:** Really, I mean, why are
23 you being --
24 **MR. MEISTER:** Excuse me, Dalia. Dalia,
25 let me get my objection on the record.

Page 287

1 GINGER
2 She said she answered your question.
3 Don't ask her hypothetical questions. Let's not
4 have to get the judge on the phone again.
5 **MR. GRIVER:** Every time we get the
6 judge on the phone, it goes against you, Bob.
7 **MR. MEISTER:** It hasn't gone against me
8 once, Yoav.
9 **BY MR. GRIVER:**
10 Q. Let me ask you, Mrs. Genger, you don't
11 remember if this was your idea or not, correct?
12 **A. I do not remember if it was my idea.**
13 **And that's my answer.**
14 Q. Okay. It could have been your idea, it
15 could have been Rochelle Fang's idea, it could
16 have been Sagi Genger's idea, correct?
17 **A. Or my lawyer's idea.**
18 Q. And who was your lawyer at the time?
19 **A. (Indicating). Sitting next to me.**
20 **MR. MEISTER:** No. Objection.
21 **BY MR. GRIVER:**
22 Q. Mr. Kortmansky?
23 **A. Either Kortmansky -- okay. So just**
24 **shows you how much I remember.**
25 Q. And this was an amendment that you

Page 288

1 GINGER
2 signed as trustee of the Orly Genger trust,
3 correct?
4 **MR. MEISTER:** Objection. Asked and
5 answered.
6 **BY THE WITNESS:**
7 **A. Yes, you said that's when I was not**
8 **supposed to. So I guess I was --**
9 **BY MR. GRIVER:**
10 Q. Okay. Mrs. Genger, how would it be in
11 the Orly Genger trust's best interests to add the
12 language at the end that provided that the
13 restrictions of paragraph 22 of the D&K amended
14 and restated agreement could be relaxed or
15 terminated with the consent of the general
16 partner, which is Sagi Genger and TPR Investment
17 Associates Inc., where Sagi Genger was the CEO at
18 the time?
19 **A. I told you I don't remember.**
20 **MR. MEISTER:** Objection.
21 Mischaracterization.
22 **BY THE WITNESS:**
23 **A. I told you I don't remember that I made**
24 **this correction, so how can I answer this**
25 **question now.**

Page 289

1 GINGER
2 **BY MR. GRIVER:**
3 Q. At the time that you signed this --
4 well, strike that.
5 Mrs. Genger, you are the trustee of the
6 trust now, okay?
7 **A. Right.**
8 Q. You are still charged with protecting
9 the trust. So I am asking you --
10 **A. I am charged?**
11 Q. With protecting the trust. It is your
12 responsibility to protect the trust, correct?
13 **A. Yeah.**
14 Q. So I am asking --
15 **A. It is my privilege.**
16 Q. -- as trustee of the trust, what
17 possible best interest could there be for the
18 Orly Genger trust for those restrictions to be
19 relaxed or terminated in a way set forth in the
20 amendment?
21 **MR. MEISTER:** Objection.
22 **BY THE WITNESS:**
23 **A. At the time, I am sure I had my**
24 **reasons, but now I don't remember what they were.**
25 **BY MR. GRIVER:**

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 290

1 GINGER
2 Q. Okay. As trustee of the trust, on what
3 basis, as we sit here today, could you possibly
4 think --
5 **A. As I sit here today, I don't know what**
6 **I was thinking then.**
7 Q. Okay. At the time that you signed this
8 amendment, had you received a copy of the amended
9 and restated limited partnership agreement that
10 was being amended?
11 **A. I don't remember.**
12 Q. Had you read it?
13 **A. I don't remember.**
14 Q. Do you recall whether or not you
15 provided this amendment to an attorney to review
16 before you signed it?
17 **A. I don't remember.**
18 Q. Okay. Did Sagi Genger just give you
19 this document and ask you to sign it?
20 **A. I didn't say that Sagi Genger gave me**
21 **the document. Why you putting words in my mouth?**
22 Q. You don't remember how it came to be
23 given to you for signature?
24 **A. No, I don't remember.**
25 Q. All right. At any time did you let the

Page 291

1 GINGER
2 surrogate court know that this amendment had been
3 made to the D&K amended and restated limited
4 partnership agreement?
5 **A. I don't remember.**
6 Q. Okay. At any time -- well, let me ask
7 you, as you sit here today, should you have -- I
8 will represent to you that there's nothing in the
9 files that indicate that you did.
10 As we sit here today, do you believe
11 that you should have let the surrogate court know
12 about this amendment?
13 **MR. MEISTER:** Objection. Calls --
14 first of all, objection to form. Secondly, it
15 calls for a legal conclusion, and it has nothing
16 whatsoever to do with this case.
17 **BY THE WITNESS:**
18 **A. I repeat what he is saying.**
19 **BY MR. GRIVER:**
20 Q. Okay. And as trustee, do you think you
21 should have apprised Surrogate Roth about this
22 amendment? Yes or no?
23 **A. I don't have any idea if I should or**
24 **shouldn't at the time.**
25 Q. Okay. As we sit here today, do you

Page 292

1 GINGER
2 think it would have been appropriate for you to
3 do so?
4 **A. I don't remember what was it about, so**
5 **I can't tell you what I thought -- who should**
6 **have done.**
7 **(Dalia Exhibit 18, amendment,**
8 **dated 11/2008, marked.)**
9 **BY MR. GRIVER:**
10 Q. Let me show you what's been marked as
11 Exhibit 18. Mrs. Genger, this is another
12 document, for the record, called amendment to the
13 amended and restated limited partnership
14 agreement of D&K Limited Partnership. It is
15 dated as of November 2008.
16 **A. November? November 22. Yes. So what**
17 **is the question?**
18 Q. Is that your signature on the second
19 page?
20 **A. I didn't say it was my signature here.**
21 Q. Did you ever give anyone permission to
22 sign on your behalf this document?
23 **A. I don't see my name here, so.**
24 Q. Well, in November of 2008, you were
25 trustee of the trust, correct?

Page 293

1 GINGER
2 **A. In November 2008, I was the trustee of**
3 **the trust. Right.**
4 Q. Okay. Do you recognize the signature
5 directly on top of yours?
6 **MR. MEISTER:** Objection. There is no
7 signature of hers.
8 **BY MR. GRIVER:**
9 Q. Directly on top of -- do you see the
10 signature --
11 **A. It doesn't spell my name anywhere so**
12 **where should I sign?**
13 Q. Did you see the signature for the 1993
14 Sagi Genger trust, do you recognize that
15 signature?
16 **A. No.**
17 Q. Do you recognize the signature for D&K
18 GP LLC --
19 **A. I don't recognize Orly's signature**
20 **here. I don't see if there is a line.**
21 Q. Do you recognize Sagi Genger's
22 signature?
23 **A. On the top I do.**
24 Q. But as we sit here today, you don't
25 believe that that's your signature on behalf of

Page 294

1 GINGER
2 the 1993 Orly Genger trust?
3 A. No.
4 Q. And as we sit here today you don't
5 recall ever giving anyone permission to sign on
6 your behalf this document that's been marked --
7 A. I know that my son has some rights to
8 sign, but, no, I don't think in this case.
9 Q. Well, that's not the question.
10 A. Not as a trustee, for sure.
11 Q. My question is, did you give anyone
12 permission to sign --
13 A. No.
14 Q. -- on your behalf this document that's
15 been marked as Exhibit 18?
16 A. No. No.
17 Q. Okay. Now, I note that you -- I note
18 that this document was produced by you. It has
19 Bates stamps, DG 146 and 147.
20 A. Where is this document?
21 MR. MEISTER: Wait for a question.
22 BY MR. GRIVER:
23 Q. Do you see those exhibits, those Bates
24 numbers?
25 A. I don't know who put the stamps on.

Page 295

1 GINGER
2 Q. No, no. Look at the bottom. It says
3 DG 146 and 147.
4 MR. MEISTER: If the question is, does
5 this document have DG 146 and 147, I will
6 stipulate it does.
7 BY MR. GRIVER:
8 Q. And that means, Mrs. Genger, that this
9 was produced by you in this litigation?
10 A. That's what you said. I don't know if
11 it is true.
12 MR. MEISTER: It means it was produced
13 by her, including her counsel, as to anything she
14 or her counsel had in their possession.
15 MR. GRIVER: Okay.
16 BY MR. GRIVER:
17 Q. Mrs. Genger --
18 A. What? Something happened?
19 MR. MEISTER: That's the way you
20 requested the request for production.
21 BY MR. GRIVER:
22 Q. Mrs. Genger --
23 A. I don't understand.
24 Q. Mrs. Genger, when did you receive this
25 document?

Page 296

1 GINGER
2 A. I don't remember.
3 Q. Did you ever seek to understand why
4 someone was purporting to sign on behalf of the
5 1993 Orly Genger trust when it was not your
6 signature on this document?
7 A. No. Because I don't remember when I
8 got it, and when I saw it, and when I read it.
9 Q. I am not asking when. I am asking do
10 you recall ever doing anything to understand who
11 signed --
12 A. No, I don't recall.
13 Q. Okay. Do you recall any effort by you
14 to understand the meaning and effect of this
15 document?
16 A. No, I don't recall.
17 Q. How would this amendment be in the best
18 interest of the Orly Genger trust?
19 MR. MEISTER: This amendment that she
20 didn't sign, that she doesn't remember ever
21 seeing before? No. No.
22 MR. GRIVER: You know what? It came
23 from --
24 MR. MEISTER: Objection.
25 MR. GRIVER: You know what? It came

Page 297

1 GINGER
2 from her possession or from --
3 MR. MEISTER: It didn't come from her,
4 it came from her or her counsel because that's
5 the way you drafted your document.
6 BY MR. GRIVER:
7 Q. Mrs. Genger, did it come from your
8 possession?
9 A. I am saying that you are harassing me,
10 you know that.
11 Q. No, I am asking you --
12 A. You are harassing me.
13 Q. Mrs. Genger, you are trustee.
14 A. I know that I am trustee, and I am
15 doing the best that I can --
16 Q. Okay. As trustee --
17 A. -- in order to protect my child,
18 okay --
19 MR. MEISTER: Dalia, wait.
20 BY THE WITNESS:
21 A. -- thanks to you.
22 MR. MEISTER: Please don't make
23 speeches. Wait for his question. Listen to the
24 question. If you can answer it, answer it.
25 BY MR. GRIVER:

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 298

1 GINGER
2 Q. How does Exhibit 18 protect your child?
3 A. **I don't know.**
4 Q. Okay. Did you ever task anyone with
5 investigating who purported to sign on behalf of
6 Orly Genger trust?
7 A. **I don't remember.**
8 Q. Did you ever --
9 A. **I don't remember if I ever.**
10 Q. Did you ever task anyone with
11 attempting to understand the effect of --
12 A. **I don't remember --**
13 Q. -- this amendment?
14 A. **-- if I ever did this.**
15 Q. Did you ever attempt to determine why
16 these changes were being made?
17 A. **I don't remember if I ever did.**
18 Q. Mrs. Genger, if you look at Exhibit
19 9 -- I will make this very simple.
20 A. **You promise?**
21 Q. I am only going to try.
22 MR. MEISTER: Dalia, please don't do
23 this.
24 BY MR. GRIVER:
25 Q. To your knowledge, was Exhibit 9 ever

Page 299

1 GINGER
2 altered, amended, changed, revised, fixed,
3 superceded, in any way by you?
4 A. **I don't remember.**
5 MR. MEISTER: Objection.
6 BY MR. GRIVER:
7 Q. Okay. Are there any other alterations,
8 amendments, changes, revisions, fixes, or
9 supersessions of Exhibit 9 other than the one we
10 have discussed today?
11 MR. MEISTER: Objection to the form of
12 the question.
13 BY THE WITNESS:
14 A. **I don't remember anyway.**
15 BY MR. GRIVER:
16 Q. If there were other changes to Exhibit
17 9, would they not be in your possession as
18 trustee?
19 A. **I don't remember if I have it or don't**
20 **have it.**
21 Q. Do you keep files as trustee?
22 A. **I do have some files. Yes.**
23 Q. Did you produce all of those files to
24 your counsel for review and production?
25 A. **Yes.**

Page 300

1 GINGER
2 Q. In November of 2008, who was your
3 counsel?
4 A. **I believe it was -- 2008?**
5 Q. Uh-huh.
6 MR. MEISTER: You told her before it
7 was Mr. Kortmansky. She says she didn't
8 remember, and you told her it was Mr. Kortmansky.
9 BY THE WITNESS:
10 A. **Yeah, right. So you see, I don't**
11 **remember even for something that happened five**
12 **minutes ago.**
13 BY MR. GRIVER:
14 Q. And it was Mr. Kortmansky?
15 A. **I guess if you tell me so.**
16 Q. Mrs. Genger, I am asking you, do you
17 have any recollection as to who your attorney was
18 in November of 2008?
19 A. **I recall what you told me, that it was**
20 **Mr. Kortmansky.**
21 Q. In producing documents in this case,
22 did you go to Mr. Kortmansky and ask him to
23 review his files?
24 A. **I don't remember.**
25 Q. You don't remember seeking that?

Page 301

1 GINGER
2 A. **No. I don't remember.**
3 Q. Do you know if your production includes
4 files from Mr. Kortmansky?
5 A. **Whatever I had, I gave to my lawyer.**
6 Q. I am not asking for what you have, I am
7 asking did you make sure that Mr. Kortmansky
8 provided documents to Mr. Meister?
9 A. **To Mr. Meister? I believe he did.**
10 Q. And on what do you base that belief?
11 A. **Because he is an honest lawyer who does**
12 **his job correctly, and that Mr. Meister received**
13 **it.**
14 Q. How do you know that Mr. Meister
15 received files from Mr. Kortmansky?
16 MR. MEISTER: That wasn't the question.
17 Your question was did she believe.
18 THE WITNESS: Which I do believe.
19 MR. MEISTER: You are asking whether
20 she knows.
21 THE WITNESS: Yeah. I don't know for
22 fact. I didn't go and check page by page.
23 MR. GRIVER: Can I make my simple --
24 THE WITNESS: But I believe that
25 lawyers behave honestly, and this is --

Page 304

Page 303

Page 305

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 306

1 GINGER
2 confused.
3 Q. If you are confused, you don't
4 understand the question, as I instructed you
5 before, I will be happy to repeat it until you do
6 understand.
7 A. Okay. So ask me, please.
8 Q. I will ask it again.
9 When did you find out about the August
10 2008 TPR TI transaction --
11 A. 2008?
12 Q. August 2008, TPR TI transactions with
13 the Trump Group?
14 A. You are talking about something else
15 about 2008?
16 Q. Mrs. Genger, there were transactions
17 involving the TPR and TRI shares with the Trump
18 Group in August of 2008 involving your son Sagi
19 Genger --
20 A. Yes.
21 Q. -- and TPR and the Sagi Genger trust.
22 My question is, when did you find out
23 about these transactions?
24 A. I can't tell you. I don't remember.
25 Q. Did you know about those transactions

Page 307

1 GINGER
2 when they were both happening?
3 A. I knew there was some transaction
4 between Sagi and the Trump Group, but I don't
5 remember the date.
6 Q. Okay. When you found out about it,
7 were the transactions taking place or had they
8 already taken place?
9 A. I don't remember.
10 Q. So you may have known about it as they
11 were taking place?
12 MR. MEISTER: Objection.
13 BY THE WITNESS:
14 A. I may or may not. I said I don't
15 remember.
16 BY MR. GRIVER:
17 Q. Can you think of anything that would
18 refresh your recollection as to when you did find
19 out about those transactions?
20 A. No.
21 Q. Look at Exhibit 15, please.
22 A. Okay. Yes, if you want me -- I have to
23 read it carefully because -- and this is
24 completely -- I can't read it. I mean, this is
25 the same here? The two pages are the same as --

Page 308

1 GINGER
2 Q. We have discussed some of it in your
3 prior deposition.
4 A. Yeah. I mean, these two pages are the
5 same? 1 and 2?
6 Q. 1 and 2, and then there's --
7 A. I know. But these two pages are the
8 same? Because this one I cannot read. And this
9 one is --
10 Q. Oh, is it -- it is the same document
11 with different signatures, right.
12 A. Different signature. Okay.
13 Q. Signatures are a little better.
14 A. Okay, okay. So what is the question
15 now?
16 Q. My question to you is, was this an
17 actual physical meeting?
18 A. You mean, if it was at the firm
19 physically?
20 Q. Yes.
21 A. I would say physically.
22 Q. And who was at the meeting?
23 A. First of all, I'm not -- I don't see
24 my -- the trust. Yeah. I see here, yes. Sagi
25 Genger.

Page 309

1 GINGER
2 MR. MEISTER: Can you read back the
3 question, please.
4 THE WITNESS: Yes. What's the question
5 again?
6 (WHEREUPON, the record was read by
7 the reporter as requested.)
8 BY THE WITNESS:
9 A. Who was at the meeting? Whoever signed
10 it, per the document.
11 BY MR. GRIVER:
12 Q. Okay.
13 A. Which is me.
14 Q. Okay.
15 A. Okay. Which is Sagi, and document --
16 okay. I would say TPR Investment Associates Inc.
17 I cannot recall who this person was because it is
18 hard also to read.
19 Q. Could it also have been Sagi in his
20 capacity?
21 MR. MEISTER: Objection. Hypothetical.
22 BY THE WITNESS:
23 A. It could, I mean, but I don't know.
24 BY MR. GRIVER:
25 Q. All right.

Page 310

1 GENDER
2 A. I really don't know.
3 Q. And who represented the Sagi Genger
4 trust?
5 A. Rochelle, probably at the time, I would
6 think.
7 Q. Were there any lawyers there?
8 A. Lawyers?
9 Q. Yes.
10 A. I don't remember.
11 Q. Did you bring a lawyer to the meeting?
12 A. Again? I am sorry.
13 Q. Did you bring a lawyer to the meeting?
14 A. I would assume, yes, because I wouldn't
15 sign anything without a lawyer.
16 MR. MEISTER: Objection. Move to
17 strike because she --
18 BY MR. GRIVER:
19 Q. Are you speculating?
20 A. I am speculating.
21 Q. Okay. I am asking you please not to
22 speculate.
23 A. Yeah. No, I am assuming, that's why I
24 am saying.
25 Q. I am asking you --

Page 311

1 GENDER
2 A. So I don't know then.
3 Q. You should --
4 A. I don't remember.
5 Q. You don't remember bringing a lawyer to
6 the meeting?
7 A. I don't remember, yeah. That's why I
8 said I assume because usually I would.
9 Q. Now, we have discussed in your prior
10 deposition day what efforts you did or did not
11 make between the signing of this meeting and the
12 UCC sale. And we also discussed, if you recall,
13 that you wanted the 30 days to try and convince
14 Sagi not to sue his sister?
15 A. Right.
16 Q. Correct?
17 A. I mean --
18 MR. MEISTER: There's no question.
19 Wait.
20 THE WITNESS: For the trust. I am
21 correcting him. The trust.
22 MR. MEISTER: Dalia, wait for the
23 question.
24 THE WITNESS: Okay.
25 BY MR. GRIVER:

Page 312

1 GENDER
2 Q. So you wanted to spend the 30 days to
3 convince Sagi not to sue the Orly Genger trust?
4 A. I was hoping that that's what I am
5 going to achieve.
6 Q. And it was a standstill for 30 days,
7 correct?
8 A. It was a standstill until today.
9 Q. No, but the meeting agreement provided
10 for --
11 A. 30 days.
12 Q. Okay. Did TPR actually wait for 30
13 days?
14 A. Not to sue?
15 Q. Not to enforce the note. If you look
16 at --
17 A. Not to sue Orly's trust.
18 Q. Look at Exhibit -- look at paragraph 8
19 of Exhibit 15.
20 A. "TPR Investments has agreed to refrain
21 from enforcing the note against each limited
22 partner for 30 days."
23 Q. Now, the two limited partners were the
24 Orly Genger 1993 trust and the Sagi Genger 1993
25 trust, correct?

Page 313

1 GENDER
2 A. Okay. Yes.
3 Q. Did TPR refrain from enforcing the note
4 against the Orly Genger trust for 30 days?
5 A. Yes.
6 Q. And on what do you base that answer?
7 A. Because they didn't enforce the note.
8 Q. Well --
9 A. As far as I know.
10 Q. Okay. At the time that you signed
11 this, did you check to see whether there was an
12 actual risk of enforcement of the note against
13 the Sagi Genger trust?
14 MR. MEISTER: Objection --
15 BY THE WITNESS:
16 A. It is not my business.
17 MR. MEISTER: -- to form.
18 BY THE WITNESS:
19 A. I am Orly's trustee. I am not Sagi's
20 trust trustee. I am not trustee of Sagi's trust.
21 My concern is for Orly's trust.
22 BY MR. GRIVER:
23 Q. Okay. And as trustee you made sure
24 that TPR abided by its agreement not to enforce
25 the note for 30 days, correct?

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 314	Page 316
<p>1 GINGER</p> <p>2 MR. MEISTER: Objection.</p> <p>3 Mischaracterizes.</p> <p>4 MR. GRIVER: Well, let me --</p> <p>5 MR. MEISTER: No, you are not going to</p> <p>6 play that game, Yoav.</p> <p>7 BY MR. GRIVER:</p> <p>8 Q. As trustee --</p> <p>9 A. Why are you harassing me? Why are you</p> <p>10 doing this? We want to finish. I mean, I told</p> <p>11 you, he did not enforce. He did not enforce</p> <p>12 the -- he did not enforce the note on Orly's</p> <p>13 trust.</p> <p>14 Q. Never?</p> <p>15 A. Not in this 30 days.</p> <p>16 Q. And you as trustee made sure that that</p> <p>17 was -- that that happened, correct?</p> <p>18 A. That that did happen.</p> <p>19 Q. That the 30 days was honored by TPR?</p> <p>20 A. Right.</p> <p>21 (Dalia Exhibit 19, memo, dated</p> <p>22 8/2/2006, marked.)</p> <p>23 MR. GRIVER: For the record, what's</p> <p>24 been marked as Exhibit 19 is a memo from Sagi</p> <p>25 Genger to David Parnes, cc-ing Dalia Genger, and</p>	<p>1 GINGER</p> <p>2 particular document before we began this</p> <p>3 deposition?</p> <p>4 A. Yeah. I didn't read it, but I saw it</p> <p>5 today, and I noted to my lawyer that this paper I</p> <p>6 didn't see before.</p> <p>7 Q. So if you look at paragraph 4, it says:</p> <p>8 D&K LP and its partners have a variety of claims</p> <p>9 against TPR and deny the enforceability of the</p> <p>10 note.</p> <p>11 And this is a memorandum that's signed</p> <p>12 by Sagi, both as on behalf of D&K LP and behalf</p> <p>13 of TPR investments?</p> <p>14 A. Yes, it says.</p> <p>15 Q. Okay. So this is Mr. Sagi Genger on</p> <p>16 behalf of D&K LP and TPR stating to Mr. Parnes</p> <p>17 that D&K LP have a variety of claims against TPR</p> <p>18 and deny the enforceability of the note, correct?</p> <p>19 MR. MEISTER: Objection. You are</p> <p>20 asking her to construe a document which isn't</p> <p>21 hers, and you are mischaracterizing what this</p> <p>22 states.</p> <p>23 MR. GRIVER: Well, she can certainly --</p> <p>24 MR. MEISTER: Objection as to form.</p> <p>25 Come on, Mr. Griver. Your case can't be that</p>
Page 315	Page 317
<p>1 GINGER</p> <p>2 it's dated August 2, 2006.</p> <p>3 BY MR. GRIVER:</p> <p>4 Q. Mrs. Genger, do you recall seeing this</p> <p>5 memo before?</p> <p>6 MR. MEISTER: Before her preparation</p> <p>7 for this?</p> <p>8 BY MR. GRIVER:</p> <p>9 Q. At anytime.</p> <p>10 A. I saw it today. I saw it today,</p> <p>11 actually.</p> <p>12 Q. You saw it today.</p> <p>13 Did you see it two days ago in your</p> <p>14 preparation for --</p> <p>15 A. No. I saw it today, actually.</p> <p>16 Q. Is that the first time you recall</p> <p>17 seeing this document?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. As far as you recall, you did</p> <p>20 not actually receive this memorandum; is that</p> <p>21 correct?</p> <p>22 A. I don't remember if I received this.</p> <p>23 Q. Okay.</p> <p>24 A. But today I did see it.</p> <p>25 Q. Okay. You saw this -- you saw this</p>	<p>1 GINGER</p> <p>2 weak that you have to resort to trickery.</p> <p>3 MR. GRIVER: You know, my case is very</p> <p>4 strong, and I think that these two days of</p> <p>5 depositions have demonstrated that. But we will</p> <p>6 move on.</p> <p>7 MR. MEISTER: Then we don't need any</p> <p>8 more.</p> <p>9 MR. GRIVER: We're going to move on,</p> <p>10 and I am going to ask you the question again and</p> <p>11 ignore Mr. Meister for the rest of this</p> <p>12 deposition.</p> <p>13 THE WITNESS: What?</p> <p>14 BY MR. GRIVER:</p> <p>15 Q. Okay. When Sagi --</p> <p>16 A. What did you say? To ignore my lawyer?</p> <p>17 Q. When Sagi stated that D&K denies the</p> <p>18 enforceability of the note in paragraph 4 of this</p> <p>19 memorandum, do you know why he was denying the</p> <p>20 enforceability of the note?</p> <p>21 A. No, I have no idea. Because I have</p> <p>22 seen this like -- I told you. I saw it today</p> <p>23 before I saw you.</p> <p>24 MR. MEISTER: Just answer the question.</p> <p>25 BY THE WITNESS:</p>

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 318

1 GINGER
2 **A. No, I don't know what Sagi was**
3 **thinking.**
4 **BY MR. GRIVER:**
5 Q. Okay. When you were trying to
6 determine whether or not to -- strike that.
7 Was there ever a time when you tried to
8 determine whether or not you could stop the UCC
9 sale of the D&K note?
10 **MR. MEISTER:** Objection. Asked and
11 answered, not only today, but also --
12 **MR. GRIVER:** Withdrawn. I will
13 withdraw it.
14 **BY MR. GRIVER:**
15 Q. You testified there was a time when you
16 explored whether or not you could stop the UCC
17 sale, correct?
18 **A. I was contemplating whether it can be**
19 **stopped. But there was no -- I couldn't find any**
20 **solution to this event from stopping.**
21 Q. Did you speak with Sagi Genger in
22 trying to stop it? In trying to stop the UCC
23 sale, did you speak with Sagi Genger?
24 **A. I don't remember if I spoke with him.**
25 Q. Okay. In trying to stop --

Page 319

1 GINGER
2 **A. At the time.**
3 Q. In trying to stop the sale, did you ask
4 Mr. Sagi Genger to provide you any documents that
5 might be relevant to the enforceability of the
6 note?
7 **A. I don't remember if I talked to him, so**
8 **how do I know if I asked him.**
9 Q. Did you seek to collect documents
10 relevant to the enforceability of the note?
11 **A. No, I didn't seek.**
12 Q. You did not ask Sagi, for example, to
13 provide you any documents he may have related to
14 the enforceability of the note; isn't that
15 correct?
16 **A. Can you ask me the question --**
17 Q. Sure, I will ask you again.
18 **A. Not this one, the one before you asked**
19 **me. Not this one, the one before.**
20 Q. Did you ask Sagi Genger to provide you
21 with documents related to the enforceability of
22 the note so that you could determine whether or
23 not --
24 **A. I said no. Now you are saying, "for**
25 **example, did you ask this." So, obviously, it is**

Page 320

1 GINGER
2 **included in the answer that was before.**
3 Q. As a limited partner, did you ask D&K
4 for any documents it might have related to the
5 enforceability of the note?
6 **A. I don't remember.**
7 Q. Okay. Did you ask TPR for any
8 documents it might have related to the
9 enforceability of the note?
10 **A. No, I don't remember.**
11 Q. Did you ask anybody --
12 **A. I don't remember.**
13 Q. Okay. Well, come on, Mrs. Genger, you
14 would remember if you asked somebody for
15 documents?
16 **MR. MEISTER:** Don't argue with the
17 witness.
18 **BY THE WITNESS:**
19 **A. No, no.**
20 **MR. MEISTER:** Don't argue with the
21 witness. You have asked the question, she says
22 she doesn't remember. Next question.
23 **BY MR. GRIVER:**
24 Q. Mrs. Genger, do you really not recall
25 whether you asked anybody for documents?

Page 321

1 GINGER
2 **MR. MEISTER:** Objection. Asked and
3 answered.
4 **BY THE WITNESS:**
5 **A. If you said "really," it doesn't**
6 **change. When I said I don't remember, I don't**
7 **remember. Really or not really.**
8 **BY MR. GRIVER:**
9 Q. If you had asked for documents, don't
10 you think you would remember?
11 **MR. MEISTER:** Objection.
12 **BY THE WITNESS:**
13 **A. No, I don't think I would remember.**
14 **BY MR. GRIVER:**
15 Q. Do you recall looking through stacks of
16 documents looking for any possibility to prevent
17 the sale of the TPR shares at the UCC sale?
18 **THE WITNESS:** Can you repeat --
19 **MR. GRIVER:** Read the question back.
20 **THE WITNESS:** No, not the question.
21 Can you repeat the ten last questions that the
22 lawyer asked me?
23 **BY MR. GRIVER:**
24 Q. Mrs. Genger --
25 **A. No, because it is the same question so**

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 322

1 GINGER
2 I have to concentrate now.
3 Q. In paragraph 6 of the memorandum --
4 A. Of this memorandum that I saw five
5 minutes ago? Yes.
6 Q. First of all, you saw it today this
7 morning?
8 A. Yes. Before I saw Bob, I saw that.
9 Q. Who showed it to you?
10 A. It was on the pile of some papers.
11 Q. Where were these papers?
12 A. On his desk.
13 Q. On Mr. Meister's desk?
14 A. Yes. And I said I am not familiar with
15 it.
16 Q. Did you meet with Mr. Meister today to
17 prepare for your deposition?
18 A. I came to pick him up to come here.
19 Q. And it was --
20 A. It wasn't when we prepared for the
21 deposition.
22 Q. You just saw this document for the
23 first time today?
24 A. Yes, yes.
25 Q. Okay. Do you have any idea why in

Page 323

1 GINGER
2 paragraph 6 D&K was talking about making a
3 counterclaim against TPR upon any attempt --
4 A. I can't -- don't talk too fast. I am
5 getting tired.
6 Q. In paragraph 6 D&K says that if
7 collection efforts are made, it could result in
8 D&K making a counterclaim against TPR. Do you
9 know the basis for --
10 A. Let me read this. You know, let me
11 read this, okay. Because you know that that's
12 not the easiest case, okay, for a layperson.
13 (Witness reading document).
14 I am really not familiar with this
15 document. So if you ask me about number 6 or 5
16 or 4, my answer is that I do not understand the
17 circumstances of when this was born, was created.
18 Q. Okay. When you became trustee, you
19 knew that the collection of the D&K note was an
20 issue, correct?
21 A. Yes.
22 Q. Did you ever seek from D&K or TPR as a
23 result all documents related to the
24 enforceability of the note so that you could best
25 protect the trust?

Page 324

1 GINGER
2 A. We had a settlement agreement.
3 Q. From anytime when you became trustee on
4 or about January 4, 2008 --
5 A. Yeah.
6 Q. -- all the way until the UCC sale in
7 February 2009, did you at any time in that period
8 of time, did you seek to collect documents
9 related to the enforceability of the note so that
10 you could best protect the trust?
11 A. No.
12 MR. MEISTER: We are changing to a new
13 line? Can we take our lunch break now, please?
14 MR. GRIVER: Let's go off the record.
15 (WHEREUPON, the deposition was
16 recessed from 12:43 p.m. until
17 1:38 p.m.)
18 * * * * *
19
20
21
22
23
24
25

Page 325

1 GINGER
2 MR. GRIVER: On the record.
3 BY MR. GRIVER:
4 Q. Mrs. Genger, directing your attention
5 to Exhibit 13, this is the notice of enforcement.
6 When did you receive -- strike that.
7 Did you ever receive this document?
8 A. No.
9 Q. Let me have this --
10 A. Maybe my lawyer did, but I don't
11 remember.
12 Q. Did you or your lawyer receive this
13 document before the UCC sale?
14 A. I personally did not receive it.
15 Q. Did your lawyer receive this document
16 before the UCC sale?
17 THE WITNESS: Did you?
18 MR. MEISTER: I wasn't your lawyer
19 then.
20 THE WITNESS: Oh, you weren't? So we
21 have to ask the other lawyer.
22 BY MR. GRIVER:
23 Q. Okay. In the files of Mr. Kortmanskyy,
24 was there a copy of this notice in them?
25 MR. MEISTER: There was not.

Page 326

1 GENDER
2 **MR. GRIVER:** Let me have this marked as
3 Exhibit 20.
4 (Dalia Exhibit 20, undated
5 memorandum, re: UCC sale, marked.)
6 **MR. GRIVER:** For the record, Exhibit 20
7 is an undated memorandum or notice to D&K Limited
8 Partnership from TPR Investment Associates Inc.,
9 informing D&K of the UCC sale.
10 **THE WITNESS:** So TPR --
11 **MR. MEISTER:** Wait for a question.
12 **BY MR. GRIVER:**
13 Q. Mrs. Genger, have you seen this
14 document before?
15 A. No.
16 Q. Did you see this document anytime
17 before the UCC sale?
18 A. No. I don't remember if I have seen
19 this before.
20 Q. Was this document that's been marked as
21 Exhibit 20, was it in the files of
22 Mr. Kortmansky?
23 A. Really, I don't know.
24 **MR. GRIVER:** Was it in the files of
25 Mr. Kortmansky?

Page 327

1 GENDER
2 **MR. MEISTER:** This document does not
3 look familiar to me. I am not sure that I have
4 seen it before. If it were in the files of
5 Mr. Kortmansky, I think I would have produced it
6 in response to your discovery request.
7 **MR. GRIVER:** Let me show you what I
8 will mark as Exhibit 21.
9 (Dalia Exhibit 21, document
10 package sent 5/19/2009, marked.)
11 **BY MR. GRIVER:**
12 Q. For the record, Exhibit 21 are certain
13 documents sent to Robert Meister from David
14 Parnes on or about May 19, 2009. Included in
15 those documents is what's been previously marked
16 as Exhibit 20.
17 A. Okay.
18 Q. Mrs. Genger, what I am going to ask you
19 to do is look through those documents and
20 identify any documents in this package that you
21 received prior to the UCC sale.
22 A. I will look quickly over it.
23 **MR. MEISTER:** Take your time.
24 **BY MR. GRIVER:**
25 Q. Take your time. If there's any

Page 328

1 GENDER
2 document that you received prior to the UCC sale,
3 please let me know.
4 A. This is something that you showed me
5 before, right?
6 Q. That's correct. That's Exhibit 13. My
7 only question --
8 A. No, I didn't see it before.
9 Q. Okay.
10 A. But it looked familiar because I saw --
11 Q. Uh-huh.
12 A. No.
13 Q. Just to make it clear on the record,
14 you have -- strike that.
15 Just to make it clear on the record,
16 you did not receive any of the documents that
17 comprise Exhibit 21 to your affidavit before the
18 UCC sale; is that correct?
19 **MR. MEISTER:** Objection to the form. I
20 think you mean Exhibit 21.
21 **MR. GRIVER:** What did I say?
22 **MR. MEISTER:** You said Exhibit 21 to
23 your affidavit.
24 **MR. GRIVER:** Oh, okay. Strike that.
25 **MR. MEISTER:** But I think that was the

Page 329

1 GENDER
2 previous -- same as the previous question, and
3 she answered correct.
4 **MR. GRIVER:** Okay.
5 **BY THE WITNESS:**
6 A. I did not.
7 **BY MR. GRIVER:**
8 Q. You did not receive any of these
9 documents before the UCC sale; is that correct?
10 A. Right.
11 Q. You did not attend the UCC sale?
12 A. No.
13 Q. Did you send anyone --
14 A. No.
15 Q. You didn't send any lawyers or anybody
16 to represent the interests of the Orly Genger
17 trust?
18 A. Right.
19 Q. All right. Mrs. Genger, if you could
20 look at Exhibit 1 to your deposition. I will
21 remind you, since it has been a while, that on
22 the last page is your signature saying that you
23 have read the answer and know the con --
24 A. Answer to what?
25 Q. That you have read this document.

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 330

1 GINGER
2 A. Oh, that I read the document.
3 Q. Exhibit 1 is your answer to the second
4 amended complaint in this action. And it is
5 verified, which means --
6 A. Wait a second. You are saying that I
7 signed this as what? As an answer to?
8 Q. You signed this answer to the second
9 amended complaint. If you look on the last page,
10 you verified its contents as being true?
11 A. That I read it and whatever is in here
12 is true? That's what it says? Okay. Okay,
13 yeah. I am getting slower now because I am tired
14 already. Okay.
15 MR. MEISTER: So what's the question?
16 BY MR. GRIVER:
17 Q. I am just setting the stage. If you
18 look at paragraph 3 --
19 A. 3, okay.
20 Q. You deny -- I will read it.
21 In paragraph 3 you, quote: Deny
22 knowledge or information sufficient to form a
23 belief as to whether the default was improperly
24 noticed or whether the foreclosure was improper,
25 period, unquote.

Page 331

1 GINGER
2 Do you see that?
3 A. Yes. I want to read it aloud so I --
4 this is paragraph 3 what I am reading now, right?
5 Q. Right.
6 A. (Witness reading document).
7 Yeah.
8 Q. Okay. Mrs. Genger, my question to you
9 is quite simple. As trustee, why did you not
10 obtain the knowledge or information sufficient
11 for you to determine whether the default was
12 improperly noticed before the UCC sale occurred?
13 A. Can you ask me again?
14 MR. GRIVER: Read it back.
15 (WHEREUPON, the record was read by
16 the reporter as requested.)
17 BY THE WITNESS:
18 A. Because I knew that -- I mean, I knew
19 the procedures were the legal procedures that TPR
20 was supposed to follow, and I knew that they --
21 the note was in default. So what's the question
22 then?
23 BY MR. GRIVER:
24 Q. Well, in 2010, in verifying this
25 answer, you stated that you did not have

Page 332

1 GINGER
2 knowledge or information sufficient to form a
3 belief as to whether the default was improperly
4 noticed.
5 A. But I noticed that nobody paid the
6 note. So it's sufficient for me.
7 Q. I'm talking about the notice. The UCC
8 sale requires certain things to happen.
9 As trustee, why is it that --
10 A. I don't know. TPR should have sent me
11 a notice.
12 Q. Okay. Then TPR did not send you a
13 notice?
14 A. They might have, but I didn't receive
15 it. That's my answer.
16 Q. But as of 2010 -- well, did you ever
17 ask TPR whether they sent it to you?
18 A. How would I know that they are supposed
19 to send it to me?
20 Q. In determining whether the UCC sale was
21 accurate, didn't you ask Sagi for all documents
22 that he sent to you, just to make sure?
23 MR. Meister: Objection. Assumes a
24 fact not in evidence.
25 BY THE WITNESS:

Page 333

1 GINGER
2 A. I cannot determine ahead of time what
3 Sagi's supposed to do. I don't know exactly what
4 he's supposed to do.
5 BY MR. GRIVER:
6 Q. All right. And you did not conduct an
7 investigation, did you?
8 A. No. I'm not in the investigation
9 business.
10 Q. Why is it that you as trustee did not
11 obtain knowledge or information sufficient to
12 determine whether or not the foreclosure was
13 improper, either before the foreclosure or after
14 the foreclosure?
15 A. But it was proper.
16 Q. How do you know?
17 A. Because it went ahead and it was
18 proper. Somebody bought it. Somebody bought the
19 stock.
20 Q. Do you understand that one of the
21 things that Orly is seeking in this litigation is
22 to unwind that sale?
23 A. Okay. She can do that. It is her
24 right.
25 Q. Okay. You as trustee, did you not have

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 334

1 GINGER
2 any responsibility to make sure that the
3 foreclosure was proper before it happened?
4 **A. But it was proper. I said, in my**
5 **opinion, it was proper.**
6 Q. And your opinion is based on what?
7 **A. Because the procedure was followed,**
8 **Sagi -- whatever requirements were -- he had to**
9 **meet in order to have the auction going on, he**
10 **fulfilled, and it looked to me that it was**
11 **proper.**
12 Q. So what procedures is it that you
13 believe were followed that made this sale proper?
14 **A. The procedure -- I knew that the**
15 **procedures were that he should put in the**
16 **newspaper some notice about the public auction,**
17 **and he did so, apparently.**
18 Q. And who is it that told you that that
19 was the procedure that was required to be done?
20 Was it Sagi or was it somebody else?
21 **A. No. Sagi.**
22 Q. Sagi told you?
23 **A. Yeah.**
24 Q. Anybody else?
25 **A. No.**

Page 335

1 GINGER
2 Q. As we sit here today, have you done any
3 investigation since the UCC sale until today to
4 determine whether the foreclosure was proper or
5 improper?
6 **A. I didn't investigate if it was proper**
7 **or improper.**
8 Q. Have you asked any of your attorneys to
9 determine whether the foreclosure was proper or
10 improper?
11 **A. No, I didn't ask.**
12 Q. As trustee of the trust, don't you
13 think it is your responsibility to make sure that
14 the foreclosure was proper or improper?
15 **A. Can you ask this again.**
16 **MR. MEISTER:** Read it back, please.
17 (WHEREUPON, the record was read by
18 the reporter as requested.)
19 **BY MR. GRIVER:**
20 Q. Strike that. Let me ask the question
21 better.
22 As trustee of the trust, isn't it your
23 responsibility to determine whether the
24 foreclosure sale was proper?
25 **A. If I had doubts, I would have**

Page 336

1 GINGER
2 **investigated, but I didn't have any doubts.**
3 Q. And that's based on --
4 **A. On what was proper.**
5 Q. And that's based on what Sagi told you?
6 **A. It is based on the fact that I have**
7 **trust in whatever Sagi told me.**
8 Q. Okay. Any other basis?
9 **A. And the fact that he told me what the**
10 **procedure is.**
11 Q. Okay. And any other basis?
12 **A. I don't remember if there were any**
13 **other bases.**
14 Q. Is there anything I can show you today
15 that would refresh your recollection?
16 **A. I am sure you do have.**
17 Q. I am asking you now is there -- do you
18 have -- other than Sagi explained to you what the
19 procedure is and you trusting Sagi, was there any
20 other basis for your determination that the sale
21 was proper?
22 **A. No. I don't remember any other.**
23 Q. And you have not charged your attorneys
24 with investigating to make sure that the sale was
25 proper?

Page 337

1 GINGER
2 **A. I don't remember that I charged -- that**
3 **the attorney charged me for that. They might**
4 **have.**
5 Q. No. That you instructed your -- strike
6 that.
7 And you have never instructed your
8 attorneys to determine --
9 **A. I never say "never" because I don't**
10 **remember. Don't use this word even with me**
11 **because I don't remember.**
12 Q. Fine.
13 You don't remember ever instructing
14 your attorneys to determine whether the
15 foreclosure was proper; is that fair?
16 **A. I don't remember that I ever instructed**
17 **my lawyer to investigate if it is proper or**
18 **improper. I don't remember if I did that or not.**
19 Q. Okay. Mrs. Genger, I am really quite
20 curious. Why don't you just resign as trustee?
21 **A. Because I want to protect my daughter's**
22 **assets.**
23 Q. And why don't you agree to accept a
24 co-trustee acceptable to your daughter?
25 **MR. MEISTER:** Objection. Assumes a

Page 338

1 GINGER
2 fact not in evidence.
3 **MR. GRIVER:** All right. I will clean
4 that up.
5 **BY MR. GRIVER:**
6 Q. Would you accept a co-trustee
7 acceptable to your daughter?
8 **MR. MEISTER:** Objection. This is not a
9 question relating to the litigation.
10 **MR. GRIVER:** That's not true.
11 **BY THE WITNESS:**
12 **A. It has never come up.**
13 **BY MR. GRIVER:**
14 Q. Well, I am asking you now. As we sit
15 here today under oath as trustee would you --
16 **A. When Orly will sit with me and talk**
17 **with me, then I will discuss it with her. If**
18 **Orly is willing to sit with me and talk with me,**
19 **then I will discuss it with her, with all**
20 **honesty. Because I just want whatever is good**
21 **for her. Yes. And if you will show me --**
22 **MR. MEISTER:** You have answered the
23 question.
24 **THE WITNESS:** Okay.
25 **MR. MEISTER:** Mr. Griver, can I ask

Page 340

1 GINGER
2 Q. Whose idea was it to bring a lawsuit in
3 the state of Delaware on behalf of the trust?
4 **A. It was my idea.**
5 Q. And did anyone -- did you discuss that
6 idea with anyone?
7 **A. I might discuss it with Bob.**
8 Q. Did you discuss it with -- did you
9 discuss it with Sagi?
10 **A. No.**
11 Q. Did you discuss it with anybody else?
12 **A. No. Only with my lawyer.**
13 Q. Okay. Do you know if your lawyer
14 discussed it with Sagi or anybody else?
15 **A. I have no idea what he discussed with**
16 **Sagi. He doesn't tell me.**
17 Q. Okay.
18 **MR. GRIVER:** Robert, I've asked for
19 this before, but I would like to -- I think that
20 the actions of Mrs. Genger as trustee, there is
21 no privilege as to them. And so on behalf of the
22 beneficiary, I would ask for all records,
23 communications, et cetera, in your possession
24 related to the Dalia Delaware action. I put this
25 in writing after Mrs. Genger's first deposition,

Page 339

1 GINGER
2 that you not grunt after the witness' answer.
3 (Dalia Exhibit 22, verified
4 complaint in Delaware action,
5 marked.)
6 **BY MR. GRIVER:**
7 Q. Mrs. Genger, do you recall on or about
8 October 24 -- strike that.
9 Do you recall that on or about October
10 4, 2011 you filed an action in the chancery court
11 of the state of Delaware on behalf of the trust?
12 **A. Right.**
13 Q. And this is a copy of the verified
14 complaint in that --
15 **A. I believe you, yeah.**
16 Q. And that's your signature before the
17 exhibits, verifying the allegations --
18 **A. Yes, that's my signature, right.**
19 Q. So before this complaint was filed, you
20 read it, you considered what it said, and you
21 agreed with its --
22 **A. Yeah.**
23 Q. Okay. And I take it that before
24 verifying it, you read this complaint carefully?
25 **A. Yeah.**

Page 341

1 GINGER
2 and I reiterate it today.
3 **BY MR. GRIVER:**
4 Q. How is it that you got the idea of
5 bringing a lawsuit in Delaware, Mrs. Genger?
6 **A. It was, I think, a quite simple**
7 **decision. Because in Delaware, the courts were**
8 **familiar with the Genger case, so to speak, and**
9 **they spend a lot of time, and they are very**
10 **familiar with the case. And I wanted the trust**
11 **to be represented and to solidify Orly's claim to**
12 **the TRI shares.**
13 **MR. GRIVER:** Okay. Let me mark this as
14 23.
15 (Dalia Exhibit 23, New York
16 complaint, marked.)
17 **THE WITNESS:** Let me get a chance to
18 read it.
19 **BY MR. GRIVER:**
20 Q. Now, Mrs. Genger --
21 **A. What date was it, by the way?**
22 Q. Was what? This is --
23 **A. What date was it?**
24 Q. The New York complaint, that's Exhibit
25 23?

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 342	Page 344
<p>1 GINGER 2 A. Yes. 3 Q. If you look at the -- 4 A. The end? 5 Q. -- very end, the summons is October 21, 6 2010. 7 A. October 2, 2010. 8 Q. Right. 9 A. Okay. 10 Q. So the year before? 11 A. I just want to ask a question, that it 12 is a technical question. 13 Q. Sure. 14 A. That the addresses that are mentioned 15 here are current for this date? 16 Q. The other -- 17 A. Like, for example, Arie Genger resided 18 at 2600 -- 19 MR. MEISTER: He can't answer that. 20 This is not -- 21 THE WITNESS: It's a document from the 22 court. Okay. I got it. 23 BY MR. GRIVER: 24 Q. Mrs. Genger, this is a complaint 25 brought by you and your attorneys on behalf of</p>	<p>1 GINGER 2 yourself to objections, just saying the word, and 3 asked and answered, objection to form -- 4 THE WITNESS: Okay. So ask me again 5 the question. 6 MR. GRIVER: Read the question back, 7 please. 8 THE WITNESS: Why? It started "why"? 9 (WHEREUPON, the record was read by 10 the reporter as requested.) 11 MR. MEISTER: And now I will object -- 12 wait a minute. I am putting my objection here on 13 the record. 14 Because, first of all, I object to the 15 form of the question. In part -- 16 MR. GRIVER: No speaking objections. 17 Speaking objections are not allowed in New York. 18 Thank you. Objection to the form. That's fine. 19 MR. MEISTER: And because it 20 mischaracterizes -- 21 MR. GRIVER: At the time of trial, that 22 will be up to a court of law. 23 BY MR. GRIVER: 24 Q. Mrs. Genger, let me have the question 25 be re-read back to you so you can make sure that</p>
Page 343	Page 345
<p>1 GINGER 2 yourself and on behalf of the Orly Genger trust. 3 A. Okay. Against Arie Genger. 4 Q. Yes. Do you recall authorizing this 5 complaint? 6 A. I am sure I did. But I have to read it 7 because I don't remember. 8 Q. You don't remember bringing a 9 complaint -- 10 A. No, I remember that I did, but I have 11 to read it in order to remember exactly the 12 details, if this is -- you know, that's what I 13 mean. Because my capacity to remember all these 14 documents is getting really limited. 15 Q. Mrs. Genger, my question to you is 16 this: Having already brought a lawsuit a year 17 before on behalf of the Orly trust, and with 18 regard to the Delaware action's effect upon the 19 trust, why did you bring a separate action in 20 Delaware a year later? 21 MR. MEISTER: I object. This is, first 22 of all -- 23 MR. GRIVER: No. This is her actions 24 as trustee. You are working for her; she is not 25 working for you. I would ask that you limit</p>	<p>1 GINGER 2 you have it duly considered in your answer. 3 (WHEREUPON, the record was read by 4 the reporter as requested.) 5 BY THE WITNESS: 6 A. So you mean why did I do it in New York 7 and then the Delaware? 8 BY MR. GRIVER: 9 Q. Yes. 10 A. That's what you meant? 11 Q. Yes. 12 A. There was some technical reason. 13 Q. And that was? 14 A. And at the moment I don't remember what 15 it was, but my lawyer told me at the time what 16 was it. But at the moment, I don't remember what 17 it was. 18 Q. And that was Mr. Meister? 19 A. Yes. 20 Q. Okay. 21 A. It was some technicality. 22 MR. GRIVER: Mr. Meister, I would ask 23 that you provide any information regarding why 24 the decision was made to bring a separate 25 Delaware action as opposed to bringing an action</p>

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 346

1 GINGER
2 in New York.
3 BY MR. GRIVER:
4 Q. Mrs. Genger, you do understand that New
5 York courts are more than able to determine
6 whether someone is a holder in due course of
7 stock?
8 A. Again, the question?
9 Q. Mrs. Genger, do you know the basis for
10 your Delaware action?
11 A. The basis?
12 Q. Yes.
13 A. No, you didn't ask me this question
14 before.
15 Q. I am going to ask the question now.
16 A. You asked me before, you asked me a
17 question, and I want --
18 MR. MEISTER: There's a new question.
19 MR. GRIVER: It is a new question.
20 THE WITNESS: It is a new question.
21 Okay.
22 BY MR. GRIVER:
23 Q. Do you understand the basis for your
24 Delaware action?
25 A. Yes. I wanted the trust to be

Page 347

1 GINGER
2 represented in Delaware in order to solidify
3 Orly's claim for the TRI shares because they
4 discussed over there, and she went by herself to
5 represent herself in the trial that they had over
6 there, and I wanted to intervene for her benefit
7 as her trustee. I mean, my motivations were only
8 good, not bad.
9 Q. Well, so you said, but let me ask you
10 this.
11 MR. MEISTER: Object to the form of the
12 question. Excuse me. I am going to object to
13 the form of the question. Now you can start a
14 new question.
15 BY MR. GRIVER:
16 Q. Do you understand what is the legal
17 basis for your claim in Delaware that the Orly
18 trust still owns the shares?
19 MR. MEISTER: Objection.
20 Mischaracterizes evidence. So, therefore, it is
21 an objection as to form.
22 BY THE WITNESS:
23 A. The question is, if I understand the
24 legal basis?
25 BY MR. GRIVER:

Page 348

1 GINGER
2 Q. Yes.
3 A. On which I complained?
4 Q. On which you claimed that the Orly
5 trust still owns the shares.
6 A. Yeah.
7 MR. MEISTER: Same objection.
8 BY THE WITNESS:
9 A. I am not a lawyer, but I believe that
10 Orly has the right to get her shares because she
11 is a victim of what -- her father did not follow
12 the procedures when he transferred or improperly
13 transferred supposedly Orly's shares from TPR to
14 her trust.
15 BY MR. GRIVER:
16 Q. And is there any reason --
17 A. And she is a victim, that she has to
18 get her shares.
19 Q. Is there any reason you couldn't have
20 made that same claim in New York?
21 A. I have no idea. I have no idea. I am
22 not a lawyer. I have no idea.
23 Q. Did you understand at the time that you
24 brought this action in Delaware, that the
25 chancery court had determined that the 3,000

Page 349

1 GINGER
2 shares of TRI stock, the Orly trust shares were
3 owned by TPR? Did you understand that that is
4 what the chancery court in Delaware had
5 determined?
6 MR. MEISTER: Objection as to form, and
7 mischaracterizes the decision.
8 BY MR. GRIVER:
9 Q. I am just asking yes or no,
10 Mrs. Genger.
11 A. Ask me the question again, please.
12 Q. Did you know when you brought the
13 Delaware action that the chancery court in
14 Delaware --
15 A. Chancery is the supreme court or the
16 lower court?
17 Q. The lower court.
18 A. The lower court. Okay.
19 Q. Did you know that the Delaware chancery
20 court, which is the court in which you filed the
21 Delaware action --
22 A. Yeah.
23 Q. -- had determined that the 3,000 shares
24 of TRI stock in the Orly trust were owned by TPR?
25 A. Well --

Page 350

1 **GINGER**
 2 **MR. MEISTER:** Objection.
 3 **MR. GRIVER:** Excuse me. Strike that.
 4 **BY MR. GRIVER:**
 5 Q. That all shares -- strike that.
 6 That the --
 7 **MR. MEISTER:** Can you put a fresh
 8 question?
 9 **MR. GRIVER:** I will do that.
 10 **BY MR. GRIVER:**
 11 Q. Were you aware when you filed in the
 12 Delaware court that the 1,102.8 shares of TRI
 13 stock, that the Delaware court had already
 14 determined that those shares and other shares of
 15 TRI stock were owned by TPR?
 16 **MR. MEISTER:** Objection.
 17 **BY THE WITNESS:**
 18 A. Yeah.
 19 **BY MR. GRIVER:**
 20 Q. Did you know that?
 21 A. I knew that there was a question of
 22 owning a share or benefiting from the share. I
 23 knew that there was a question of owning or
 24 benefiting, and that was the question that I
 25 based my complaint on. I know that there was a

Page 351

1 **GINGER**
 2 question there that was not clear if owning the
 3 shares means also benefiting from the shares.
 4 There was something that was unclear. I know it
 5 was unclear by also my lawyer. It was not clear.
 6 Q. But you understood, did you not, that
 7 on August 18, 2010, the Delaware chancery court
 8 issued a final judgment order in the TRI
 9 Investors v. Arie Genger case, that found that
 10 the 3,000 shares of TRI stock, including the
 11 shares of the Orly trust, were, in fact, owned by
 12 TPR? You knew that, correct?
 13 **MR. MEISTER:** Can I have that read
 14 back, please.
 15 (WHEREUPON, the record was read by
 16 the reporter as requested.)
 17 **BY MR. GRIVER:**
 18 Q. I will refer you to paragraph 22 of
 19 your New York complaint if you need to refresh
 20 your recollection.
 21 A. No, no. I remember there was a
 22 decision like that; however, this did not stop me
 23 from challenging the court and looking in a fresh
 24 way at the case of Orly.
 25 Q. But given the choice between filing in

Page 352

1 **GINGER**
 2 New York state and filing your case in Delaware,
 3 why did you choose to go to Delaware where the
 4 chancery court had already determined that the
 5 TRI stock were owned by TPR? Why didn't you go
 6 to New York where that determination had not yet
 7 been made?
 8 **MR. MEISTER:** Objection as to form.
 9 **BY THE WITNESS:**
 10 A. That's what my lawyer suggested to do.
 11 **BY MR. GRIVER:**
 12 Q. You're relying on --
 13 A. Yeah.
 14 Q. That would be Mr. Meister?
 15 A. Yeah. I rely on my lawyer's advice.
 16 Q. And Mr. Meister --
 17 A. You think that I know exactly what
 18 court is better for me to win for Orly the
 19 shares? I am trying to do whatever is good for
 20 her.
 21 Q. And this determination to bring a case
 22 in Delaware as opposed to New York was a decision
 23 made exclusively by yourself and your lawyer
 24 Mr. Meister?
 25 A. The decision to sue --

Page 353

1 **GINGER**
 2 Q. In Delaware?
 3 A. -- the complaint in Delaware was
 4 exclusively made by us.
 5 Q. And by "us," you mean yourself and
 6 Mr. Meister?
 7 A. Right.
 8 Q. Okay. With no input from anybody else?
 9 A. Right.
 10 Q. No input from anyone else, be it a
 11 lawyer or another member of the Genger family?
 12 A. No, no.
 13 Q. Or the Trump Group?
 14 A. It is my complaint. It is not somebody
 15 else's complaint.
 16 Q. And no one else -- was anyone else
 17 apprised of the bringing of this lawsuit before
 18 it was brought?
 19 A. What do you mean? Did I check in the
 20 street from one person to another?
 21 Q. Did you tell anybody? Did you tell
 22 anyone you were bringing this action before the
 23 date of filing?
 24 A. I don't remember.
 25 Q. Did Mr. Meister tell anyone before the

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 354

1 GINGER
2 date of filing?
3 **A. Ask him. I don't know. I don't know.**
4 Q. To your knowledge, did Mr. Meister tell
5 anybody?
6 **A. I don't know. I don't remember if he**
7 **said. I have no knowledge.**
8 Q. Did you tell Orly before you filed
9 this?
10 **A. No.**
11 Q. Did you tell anybody else, to your
12 memory?
13 **A. You asked me this question. I said no.**
14 **No. This was a decision made by my lawyer and me**
15 **that it is the right thing to do.**
16 Q. With no input from anybody?
17 **A. Right.**
18 Q. With no discussion with anybody?
19 **A. Right. You are going to ask me again?**
20 Q. Did you understand that the Delaware
21 chancery court was overturned as to its
22 determination that the Orly trust shares actually
23 belonged to TPR based on the fact that the Orly
24 trust was not in front of the Delaware courts?
25 Were you aware that that --

Page 355

1 GINGER
2 **A. You have to repeat it again. It is**
3 **getting late.**
4 Q. Okay. Please listen carefully.
5 Were you aware --
6 **A. Yeah.**
7 Q. -- when you filed your Delaware case --
8 **A. Yeah, right.**
9 Q. -- that the Delaware supreme court had
10 reversed the chancery court determination that
11 the Orly trust TRI shares belonged to TPR, were
12 owned by TPR, because the Orly trust was not --
13 **A. Represented.**
14 Q. -- in Delaware?
15 **A. And that's why I went there, and I**
16 **represented as a trustee.**
17 Q. And Mr. Meister --
18 **A. And hoping that that will help Orly's**
19 **case, because I was a trustee. Before they said**
20 **that she was not represented, she couldn't**
21 **represent herself because she needed a trustee to**
22 **represent her.**
23 Q. And that was --
24 **A. That's how I came to the idea that I**
25 **should go there and fight for her.**

Page 356

1 GINGER
2 Q. As opposed to fighting for her in New
3 York?
4 **A. I don't know why you are putting this**
5 **New York thing.**
6 Q. Because --
7 **A. The thing is that we want to win the**
8 **shares. What does it matter if it is in New York**
9 **or Delaware?**
10 Q. Because you had already sued in New
11 York. Why didn't you just sue again in New York?
12 **A. Because if you sue again, you have**
13 **another chance. As many times as you sue, your**
14 **chances are getting bigger and bigger. You**
15 **should know that by now.**
16 Q. You had to sue again either in Delaware
17 or you had to sue again in New York. Why did you
18 choose Delaware? Was it based on Mr. Meister's
19 advice?
20 **MR. MEISTER: Objection. Compound**
21 **objection. Asked and answered.**
22 **BY THE WITNESS:**
23 **A. I sued in Delaware. I told you why.**
24 **BY MR. GRIVER:**
25 Q. But why not New York?

Page 357

1 GINGER
2 **A. Because I sued already in New York.**
3 Q. And you didn't want to sue twice?
4 **MR. MEISTER: Sue who twice?**
5 Objection. No. Objection as to form.
6 **THE WITNESS: You are getting me**
7 **confused.**
8 **MR. MEISTER: Dalia, wait until I get**
9 **my objection out, please.**
10 **THE WITNESS: He is confusing me. I**
11 **don't know. He confuses me.**
12 **MR. MEISTER: It'd confuse anyone**
13 **because the question is improper.**
14 **BY MR. GRIVER:**
15 Q. You didn't -- you had sued -- strike
16 that.
17 Is it your testimony here today that
18 your decision to sue in the state of Delaware as
19 opposed to the state of New York or any other
20 state is based on the advice of Mr. Meister?
21 **A. Yes.**
22 Q. And that based on that advice, you as
23 trustee determined to sue in the state of
24 Delaware?
25 **A. Right.**

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 358

1 **GINGER**
2 Q. And you did that with a full
3 understanding of what had happened in -- what the
4 chancery court decision was --
5 A. Yes.
6 Q. -- correct?
7 And with a full understanding of what
8 the Delaware Supreme Court had said, correct?
9 A. Yes.
10 **MR. GRIVER:** Okay. Mr. Meister, I
11 would like to see any information regarding that
12 decision. And I would like that as soon as
13 possible.
14 **MR. MEISTER:** I will note for the
15 record I don't see what that has to do with any
16 of the allegations in this action, or for that
17 matter, any other action.
18 **MR. LEINBACH:** The verified complaint
19 was filed after our complaint was filed, the
20 Delaware action. So, obviously, we couldn't --
21 **THE WITNESS:** What? What happened?
22 **MR. LEINBACH:** -- couldn't plead events
23 that didn't take place when the action was
24 brought.
25 **MR. GRIVER:** On behalf of the

Page 359

1 **GINGER**
2 beneficiary of the trust, I am asking the trustee
3 to provide the information related -- all
4 information, all conversations, all input
5 provided, all conversations had, related to the
6 bringing of a Delaware complaint.
7 **THE WITNESS:** Okay.
8 **MR. MEISTER:** I suggest you put that in
9 writing pursuant to the CPLR so that I can file
10 my formal response.
11 **MR. GRIVER:** I have put that -- I have
12 already written to you about that.
13 Can we take a break, please.
14 (WHEREUPON, a recess was had from
15 2:23 p.m. to 2:26 p.m.)
16 **BY MR. GRIVER:**
17 Q. The Orly Genger trust is paying for the
18 Delaware DJ action filed by you?
19 A. The Orly Genger trust is paying for the
20 Delaware action? At the time I told you that I
21 seek, and I don't know if that's the case, that
22 I -- at the time I told you that I was paying the
23 bills by myself at the point where I needed
24 financial help, and some of it came with a
25 settlement with TPR where we got \$100,000, and

Page 360

1 **GINGER**
2 then there was the note from Manhattan Safety,
3 whatever name it is, Safety Manhattan.
4 Q. So to sum up, the Delaware action --
5 A. Might be, I guess, one of those
6 accounts.
7 Q. The Delaware action is being paid for
8 by the Orly trust, correct?
9 **MR. MEISTER:** I think this was covered
10 in the first session of deposition.
11 **THE WITNESS:** I told you, somebody --
12 **MR. MEISTER:** She testified --
13 **THE WITNESS:** Somebody has to pay it.
14 **BY MR. GRIVER:**
15 Q. And who's paying? That's my only
16 question.
17 A. Whoever is suing.
18 Q. Okay.
19 A. Who is suing? Orly's suing? The trust
20 is suing?
21 **MR. MEISTER:** This was asked and
22 answered.
23 **BY MR. GRIVER:**
24 Q. The trust is suing.
25 A. Obviously.

Page 361

1 **GINGER**
2 Q. Okay. In the New York action, the
3 complaint that's been marked as Exhibit 23, who
4 is paying?
5 A. The UCC, so to speak?
6 Q. No. This New York action, brought on
7 behalf of yourself individually and on behalf of
8 the Orly trust --
9 A. Whoever is suing, this is the one that
10 pays.
11 Q. So in this case you are suing both
12 individually and purportedly on behalf of the
13 trust?
14 A. Yeah.
15 Q. So my question is who is paying it?
16 **MR. MEISTER:** She answered the question
17 already.
18 **BY THE WITNESS:**
19 A. Financially, I do the proper thing.
20 When it is individually, me, I pay. When it is
21 the trust, the trust pays, from whatever finances
22 we can, you know, have available. In the
23 beginning I paid everything for the trust.
24 **BY MR. GRIVER:**
25 Q. In this case, you are suing both

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 362

1 GINGER
2 individually and on --
3 A. So it is split?
4 Q. 50/50?
5 MR. MEISTER: No. Excuse me. She
6 answered this. You got an answer on the record.
7 I corrected the record the first time. This is
8 clear.
9 MR. GRIVER: Show me.
10 MR. MEISTER: Show you? All right. We
11 are going to suspend. We are going to suspend.
12 I am going to show him --
13 MR. GRIVER: Okay. Then I withdraw the
14 instruction that you show me.
15 BY MR. GRIVER:
16 Q. I just want to know, was it a 50/50
17 split?
18 MR. MEISTER: There was no 50/50 split.
19 She paid for the action against Arie, the trust
20 paid for the Delaware action, as this was stated
21 before. If you'd either listen to her answers or
22 read the transcript, you'd know that.
23 BY MR. GRIVER:
24 Q. As we sit here now, who's paying for
25 the Arie action in New York? Is it you or is it

Page 363

1 GINGER
2 the trust?
3 A. Let me tell you something.
4 Q. I just want an answer to my question.
5 A. Whoever sues, that's the person who
6 pays. If I sue, I pay. If the trust sues, the
7 trust pays. That's how it was. So I don't know
8 specifically if you ask me this or this or that.
9 Q. Okay.
10 A. That's what it is. That's the rule, I
11 think.
12 Q. So the -- whose idea was it --
13 A. I mean, can I collect now the money
14 that trust owes me, my money?
15 MR. MEISTER: Don't ask questions.
16 Just wait for the next question, if he asks a
17 permissible question. Especially if it's a fresh
18 question.
19 BY MR. GRIVER:
20 Q. Are you aware at some point Pedowitz &
21 Meister brought an interpleader action in the
22 southern district of New York?
23 A. Yes. Right.
24 Q. Whose idea was it to bring an
25 interpleader action?

Page 364

1 GINGER
2 A. Okay. This is an open issue, and it --
3 I am glad that you brought it up, because it
4 might be that the firm will have to pay for it
5 because I did not initiate it.
6 Q. You did not okay this?
7 A. The interpleader, no. So we will have
8 a discussion about it.
9 Q. Okay.
10 A. And we see who's going to pay.
11 Q. Have they -- has Pedowitz & Meister
12 tried to bill you as trustee for the time spent
13 on the interpleader action?
14 A. I don't remember that. Truly, I don't
15 remember.
16 MR. GRIVER: Mr. Meister, to the extent
17 that --
18 THE WITNESS: This will be resolved.
19 MR. MEISTER: As I stated on the record
20 at the first session, the first time you asked
21 these series of questions --
22 MR. GRIVER: I never asked these
23 questions on this.
24 MR. MEISTER: You want an answer or do
25 you just want to harass the witness?

Page 365

1 GINGER
2 MR. GRIVER: No, I will take an answer
3 from you.
4 MR. MEISTER: Okay. The charges for
5 bringing the interpleader action have not been
6 billed to anyone. The charges for the trust's
7 answer and claim over against TPR, which resulted
8 in TPR agreeing that the trust was the beneficial
9 owner was billed to the trust.
10 BY MR. GRIVER:
11 Q. Did Pedowitz & Meister consult with
12 you, Mrs. Genger, before bringing the
13 interpleader action?
14 A. No, they did not consult with me.
15 Q. To your knowledge, did Pedowitz &
16 Meister consult with anybody before bringing the
17 interpleader action?
18 A. I have no idea.
19 Q. You never asked them on what --
20 A. No. Why should I ask him? I mean --
21 Q. You never asked him why they were
22 bringing an interpleader?
23 A. No, I have other things in my life. I
24 don't pick up the phone and ask Bob, "Why did you
25 do the interpleader, the action," or -- I hardly

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 366

1 GINGER
2 know what is an interpleader action even.
3 Q. Did you ask him if they were doing it
4 on your behalf or on behalf of the trust since
5 they represent you in both capacities?
6 A. I knew that there is some kind of legal
7 move that apparently Pedowitz & Meister decided
8 to do with the escrow account. And I thought to
9 myself, that that's the right thing to do. I
10 didn't ask him if it is a necessary thing. I am
11 not a lawyer. I mean, I am just the client. If
12 he thinks that that's the right thing to do, you
13 know, I follow him, whatever he says. And if it
14 is a mistake, or if he did it by his own
15 initiative and it was not correct, he should be
16 paying for it, or we should discuss this later
17 on. Nobody's trying to steal money from each
18 other. I mean, this is --
19 Q. Did you think this was -- on what basis
20 did you think that this was a good thing to bring
21 the --
22 A. I didn't think it is a good thing.
23 Q. Did you ask Mr. Meister whether he was
24 bringing it on behalf of yourself as an
25 individual, or --

Page 367

1 GINGER
2 A. I didn't talk to him. I just knew that
3 he did it.
4 Q. Okay. Do you think --
5 A. I don't know even what is an
6 interpleader. I don't know. That's taking the
7 escrow account from his company to the court?
8 This is what it is?
9 Q. Yes.
10 A. Okay.
11 Q. And on what basis would it be to the
12 benefit of the Orly trust to do that?
13 A. I have no idea.
14 Q. Well, as the trustee you are charged
15 with making sure the actions taken on your
16 behalf --
17 A. I trusted that he has a good judgment
18 to do something for the benefit of Orly trust. I
19 am going to start suspecting my own lawyer for
20 the trust is going to do actions that would be
21 against the beneficiary of the trust?
22 Q. Did you ask him to explain why he --
23 why Pedowitz & Meister did what it did?
24 A. No.
25 Q. Okay. Did you ask Pedowitz & Meister

Page 368

1 GINGER
2 whether it took this action to benefit you as an
3 individual as opposed to you as trustee?
4 A. An individual?
5 Q. Sure. They represent -- Pedowitz &
6 Meister represents you as an individual, correct?
7 A. Right. No, I never thought about this
8 as an individual. I thought about it as an
9 action that has to do with the trust, because it
10 is an account, it was an account for Orly.
11 Q. As we sit here today, can you explain
12 to me why the Pedowitz & Meister interpleader
13 action would have benefited the Orly trust?
14 A. I have no idea. That's -- it is
15 something technical that the lawyers decided to
16 do. And I don't know why.
17 MR. GRIVER: Okay. Mr. Meister, to the
18 extent that you take the position that Pedowitz &
19 Meister did this to -- on behalf of Dalia Genger
20 as trustee on behalf of the Orly Genger trust, I
21 would ask for all records involving the
22 interpleader action, why it was taken, who you
23 discussed it with, what was the basis for doing
24 so, including, but not limited to, any
25 discussions that you had with co-defendants or

Page 369

1 GINGER
2 co-defendant's counsel.
3 THE WITNESS: This is a long list of
4 requests. You want us to write it down? Because
5 I won't remember.
6 MR. MEISTER: Don't answer.
7 THE WITNESS: She is taking it. Okay.
8 MR. GRIVER: Let's have this marked as
9 Exhibit 24.
10 (Dalia Exhibit 24, interpleader
11 complaint, marked.)
12 MR. GRIVER: For the record, Exhibit 24
13 is the interpleader complaint, Pedowitz & Meister
14 LLP, the TPR Investment Associates Inc., et al.
15 THE WITNESS: Yeah.
16 BY MR. GRIVER:
17 Q. You are telling me, Mrs. Genger, that
18 you had no advance knowledge that this complaint
19 was going to be filed?
20 MR. MEISTER: Is that a new question or
21 is it -- the question is, whether or not she told
22 you before?
23 BY MR. GRIVER:
24 Q. Mrs. Genger, did you have advance
25 knowledge that this complaint was going to be

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 370

1 GINGER
2 filed by Pedowitz & Meister?
3 **A. I don't remember. I don't remember.**
4 **There's so many papers. I don't remember.**
5 **MR. MEISTER:** You have answered the
6 question.
7 **MR. GRIVER:** Let me have this marked as
8 25.
9 (Dalia Exhibit 25, letter and
10 promissory note dated 12/17/2007,
11 marked.)
12 **BY MR. GRIVER:**
13 **Q.** For the record, what's been marked as
14 Exhibit 25 is a letter dated December 17, 2007,
15 and a promissory note in connection with letter
16 agreement, 12-17-07. It has been Bates stamped
17 DG 1 through 5.
18 Mrs. Genger, let me know when you are
19 ready to discuss what's been marked --
20 **A. Ask me the question. Maybe it will be**
21 **easier for me to read it if I can focus more on**
22 **the answer.**
23 **Q.** Okay. Why don't you also look at Dalia
24 3. I think that's the easiest way to get at
25 this. Look at Dalia 3, what's been previously

Page 371

1 GINGER
2 marked as Dalia 3. Those are your amended
3 responses to plaintiff's interrogatories, and
4 please look at interrogatory 30.
5 **MR. MEISTER:** Is there a pending
6 question?
7 **MR. GRIVER:** I am waiting for her to be
8 ready.
9 **BY THE WITNESS:**
10 **A. You told me to look at interrogatory --**
11 **BY MR. GRIVER:**
12 **Q.** Number 30 in your response.
13 **A. In the response. Yeah.**
14 **Q.** Okay. Interrogatory number 30 says --
15 well, Mrs. Genger, why don't you read into the
16 record interrogatory number 30.
17 **MR. MEISTER:** Read aloud?
18 **MR. GRIVER:** Yes.
19 **BY THE WITNESS:**
20 **A. "State each transfer, pledge, and/or**
21 **sale of your shares of TPR, including in your**
22 **answer the date of each transfer, pledge, or**
23 **sale; the recipient of the TPR share; the number**
24 **of shares transferred, pledged or sold; and the**
25 **consideration for each transfer, pledge, or**

Page 372

1 GINGER
2 sale."
3 **The response is: "On December 17,**
4 **2007, I sold 250 shares of the common stock of**
5 **TPR to TPR for its \$5 million note."**
6 **BY MR. GRIVER:**
7 **Q.** When you gave that interrogatory
8 response, were you referring to the documents
9 that have been marked as Exhibit 25?
10 **A. The question is, as I understand it, me**
11 **selling the shares, right, to TPR.**
12 **Q.** That's the thing. What happened on
13 12-17-07 --
14 **A. Wait a second.**
15 **Q.** -- was a redemption --
16 **A. Okay. 12-17, yeah. I said that I sold**
17 **it, 250 shares.**
18 **Q.** And when you said that, you were
19 referencing the documents that have been marked
20 as Exhibit 25, correct?
21 **A. Can you repeat that? I'm sorry.**
22 **Q.** Here's my concern, Mrs. Genger, and it
23 is a small one.
24 **A. Yeah. A small one?**
25 **Q.** What's been marked as Exhibit 25 is

Page 373

1 GINGER
2 actually a redemption, it is not a sale. Those
3 are different things. When you redeem shares to
4 a company and they become -- and they go back to
5 the company, that's called a redemption, not a
6 sale.
7 So I just wanted to make sure that your
8 answer is based on these documents --
9 **A. I sold the shares. I don't have the**
10 **shares to TPR.**
11 **Q.** To TPR? Who did you sell the shares
12 to?
13 **A. To TPR.**
14 **Q.** You sold the shares to TPR?
15 **A. Yeah.**
16 **Q.** And what you call a sale, but what I
17 would characterize as redemption, is what's
18 marked as Exhibit 25, these are the documents
19 memorializing that redemption?
20 **A. Yes. I sold all my shares to TPR.**
21 **Q.** Okay. For \$5 million?
22 **A. Right.**
23 **Q.** Did you -- okay.
24 And those were all the shares of TPR?
25 **A. All the shares. All my shares.**

Page 374

1 **GENGER**
 2 Q. And that took place on December 17,
 3 2007?
 4 A. Yes.
 5 Q. So as of December 17, 2007, you were no
 6 longer a shareholder?
 7 **MR. MEISTER:** As of December 18.
 8 **BY THE WITNESS:**
 9 A. Yeah, I guess.
 10 **BY MR. GRIVER:**
 11 Q. As of December 17 or 18, 2007, you were
 12 no longer a shareholder?
 13 A. Yeah. 17 or 18. Yeah.
 14 Q. And why is it that you decided to sell
 15 your shares on December 17?
 16 A. On that date?
 17 Q. Yes.
 18 A. I wouldn't know why on this specific
 19 date.
 20 Q. Was it because Ms. Enriquez attempted
 21 to make you the trustee of the trust on December
 22 18?
 23 A. I don't think so.
 24 Q. Was it in preparation to become a
 25 trustee?

Page 375

1 **GENGER**
 2 A. No, I knew that I am going to assume
 3 the -- I knew that potentially I will have to be
 4 Orly's trustee, and enjoy your company so many
 5 times here. So I prepared myself to be eligible
 6 to have this honor to be trustee of Orly's trust
 7 and be sued countless times.
 8 Q. Don't --
 9 A. I am just explaining to you what is --
 10 **MR. MEISTER:** Adding additional things
 11 to express your emotions don't help the record.
 12 So just answer the question.
 13 **BY MR. GRIVER:**
 14 Q. Now, why is it that you sold your
 15 shares -- strike that.
 16 Why is it that you allowed TPR to
 17 redeem your shares for \$5 million?
 18 A. Why? I can do whatever I want. What
 19 do you mean?
 20 Q. Strike that.
 21 Didn't you apply TPR to redeem the
 22 shares of the company because that --
 23 A. You said redeem. Is that not sale? I
 24 want to understand. What are you telling me?
 25 Redeem or sell? I want to understand what the

Page 376

1 **GENGER**
 2 difference is --
 3 Q. Okay.
 4 A. -- when you are saying that.
 5 Q. Look at Exhibit 14, paragraph 10.
 6 Exhibit 14 is an affidavit of yours, sworn to on
 7 March 11, 2008. And look at paragraph 10, page 3
 8 to 4.
 9 A. Okay.
 10 Q. Second sentence.
 11 A. Okay. You mean, this is what Orly's
 12 writing?
 13 Q. This is what you wrote. You signed it.
 14 A. Where? Where does it say? Orly
 15 Genger, petitioner, against me.
 16 Q. Dalia 14. Affidavit of Dalia Genger.
 17 **MR. MEISTER:** Yes.
 18 **BY THE WITNESS:**
 19 A. Okay. I got it. Affidavit of Dalia
 20 Genger. Okay. I'm sorry. It is number 10, you
 21 said?
 22 **BY MR. GRIVER:**
 23 Q. Yes. Paragraph 10.
 24 A. Yeah.
 25 Okay. So, what? So I guess "redeem"

Page 377

1 **GENGER**
 2 means that I am kind of giving -- I am selling
 3 the shares to the company?
 4 Q. Selling --
 5 A. The shares --
 6 Q. Letting the shares go back to the
 7 company --
 8 A. I mean, going from me --
 9 Q. To TPR?
 10 A. To TPR. Okay.
 11 Q. And --
 12 A. From my ownership to TPR ownership.
 13 Q. Right. And you did that because that
 14 way both Orly and Sagi would share equally?
 15 A. Yeah.
 16 Q. And it was important to you that that
 17 happened because you wanted to treat both your
 18 children equally?
 19 A. Obviously.
 20 Q. And it was important to you that you
 21 let the court know that in its decision as to
 22 whether or not you should be trustee?
 23 A. I don't know if that was the reason,
 24 but, yeah, obviously, I want both my kids to be
 25 treated equally.

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

Page 378

1 **GENGER**
2 Q. And this was information that you chose
3 to share with the trustee in --
4 **A. With the trustee?**
5 Q. Excuse me. This is information --
6 strike that.
7 The fact that you were redeeming your
8 shares back to TPR was information you wanted the
9 surrogate court to know in connection with the
10 surrogate court's determination as to whether you
11 should be trustee, correct?
12 **A. Yeah.**
13 Q. All right. So now let's -- and now
14 let's look at what's known as Exhibit 25.
15 **A. Okay.**
16 Q. This is TPR's redemption of your 250
17 shares, correct?
18 **A. Right. This is the same 250 that we**
19 **were talking before, right?**
20 Q. Yes.
21 Did the shares go back to TPR?
22 **A. Yes.**
23 Q. Did the -- has TPR been paying the
24 promissory note as agreed?
25 **A. Yes.**

Page 379

1 **GENGER**
2 Q. So as of January 15, 2013, you have
3 received \$180,000 from TPR in exchange for your
4 250 shares?
5 **A. If you calculate it, correctly**
6 **calculate it, whatever it is, yeah, I did get**
7 **that.**
8 Q. That's -- okay. So if we were to look
9 at your tax returns, it would show both the
10 redemption of your shares in exchange for the \$5
11 million note and it would show these yearly
12 payments by TPR, correct?
13 **A. Again?**
14 **MR. MEISTER:** Objection. I don't see
15 how the tax returns showed the redemption. I
16 don't understand what --
17 **MR. GRIVER:** Well, because she is
18 getting paid by TPR.
19 **BY THE WITNESS:**
20 **A. Yes. I am getting paid by TPR.**
21 **BY MR. GRIVER:**
22 Q. Okay. Is the agreement evidenced by
23 the documents that have been marked as Exhibit
24 25, that is the 12-17-07 letter and the
25 promissory note in connection with that letter --

Page 380

1 **GENGER**
2 **A. I have to stop you because you have to**
3 **start again. Start at the beginning again. I**
4 **didn't get it.**
5 Q. I will start over.
6 **A. I didn't get it.**
7 Q. Has the agreement memorialized by --
8 **A. Here --**
9 Q. -- by the documents attached as Exhibit
10 25 --
11 **A. Yeah.**
12 Q. -- that is the 12-17-07 letter and the
13 attached promissory note, was that agreement
14 later altered, amended, changed, revised, fixed,
15 or superceded in any way?
16 **A. I don't remember that it was. I don't**
17 **remember that it was revised.**
18 Q. Okay. Have you gotten only \$180,000 in
19 exchange for your 250 shares or have you gotten
20 more than that?
21 **A. I got whatever I was supposed to get.**
22 Q. Pursuant to this agreement?
23 **A. Yeah.**
24 Q. There was --
25 **A. I mean, I gave the shares -- I sold the**

Page 381

1 **GENGER**
2 **shares.**
3 Q. So the shares are now with TPR?
4 **A. Yes. 100 percent over there. I don't**
5 **have a single share at home.**
6 Q. No, but I am asking are those shares
7 still with TPR?
8 **MR. MEISTER:** How would she know?
9 **BY THE WITNESS:**
10 **A. Ask TPR. Do you know what TPR is**
11 **doing? I'm not there. I am not a director. Do**
12 **I know where they are?**
13 **BY MR. GRIVER:**
14 Q. So you have no way of knowing what
15 happened, whether those shares are still with
16 TPR?
17 **A. I am not part of TPR. I don't know.**
18 Q. Let me ask you this: Is there any
19 board resolution approving the redemption of
20 these 250 shares back to TPR?
21 **A. I didn't understand the question.**
22 Q. Is there a board resolution --
23 **A. Board resolution of TPR?**
24 Q. Yes.
25 Is there a TPR board resolution

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 382

1 GINGER
2 approving of the redemption to you -- excuse me.
3 Is there a TPR board resolution
4 approving of the redemption of these 250 shares
5 back to TPR in exchange for \$5 million?
6 **A. You mean if there is a paper that TPR**
7 **issued for my giving them the 250 -- selling them**
8 **or whatever, the 250 shares?**
9 Q. Yes.
10 **A. If they issued such a paper?**
11 Q. Yes.
12 **A. I don't know. But I imagine that, yes,**
13 **I mean, it should be.**
14 **MR. MEISTER:** Just --
15 **BY MR. GRIVER:**
16 Q. Mrs. Genger, at that time you were a
17 director of TPR, so I am asking you --
18 **A. No, I was immediately not director**
19 **after that.**
20 Q. And was there a --
21 **A. Immediately as I gave my shares, I was**
22 **not a director.**
23 Q. All I am simply asking, is there a TPR
24 resolution --
25 **A. We have to check. We have to check.**

Page 383

1 GINGER
2 I'm not sure.
3 Q. I will represent to you that I have
4 received none in production in this case.
5 **A. Okay.**
6 Q. Do you recall there being one?
7 **A. I don't recall.**
8 Q. Who drafted these documents?
9 **A. You know my answer. I don't draft**
10 **these. I am not a lawyer. I don't know how to**
11 **draft it. A lawyer drafted it, and who was the**
12 **lawyer, I do not know.**
13 Q. Are you sure --
14 **A. This is always the answer that I will**
15 **give you because I really don't know.**
16 Q. Are you sure that a lawyer drafted it,
17 or do you think that Sagi drafted it?
18 **MR. MEISTER:** Objection. Compound.
19 Calls for speculation.
20 **BY MR. GRIVER:**
21 Q. Well --
22 **A. If Sagi is a lawyer, then he might have**
23 **drafted it, but he is not a lawyer.**
24 Q. The lawyer who drafted it, do you
25 know -- was the lawyer who drafted it, was it a

Page 384

1 GINGER
2 lawyer for Sagi or was it a lawyer for TPR?
3 **A. I do not know. I told you.**
4 Q. If you don't know, you don't know.
5 **A. I don't know this.**
6 Q. How did the purchase price of -- how
7 was the purchase price of \$5 million determined?
8 **A. Sagi had an estimate of the value of**
9 **the company, and this is how it came about, the**
10 **number.**
11 Q. He had a written estimate or he just
12 told you that he thought that was a fair price?
13 **A. Maybe he had a written. I don't**
14 **remember if he had it written or not.**
15 Q. Okay. And was there any --
16 **A. This was close to my divorce, that's**
17 **why it was easy to calculate at the time.**
18 Q. Did you have TPR stock certificates at
19 that time that you signed over to TPR?
20 **A. I think I might have, yeah. Yes. Yes.**
21 **Yes, I did.**
22 Q. Let's go back to the valuation. This
23 was -- as we sit here today, do you know whether
24 it was a written valuation or not?
25 **A. I don't know.**

Page 385

1 GINGER
2 **MR. MEISTER:** She answered that.
3 **BY THE WITNESS:**
4 **A. I don't know. I know that it was close**
5 **to my divorce so it was kind of easy because, you**
6 **know, we had mediation, and, you know, with my**
7 **husband. And so it was quite easy to know how**
8 **much the value of my shares is.**
9 **BY MR. GRIVER:**
10 Q. The valuation, was it a valuation done
11 by Sagi?
12 **A. I don't know who did the valuation.**
13 Q. You didn't do the valuation?
14 **A. No. I am not qualified to do that.**
15 Q. Do you recall any third party company
16 or third party of any kind doing a valuation to
17 come up with the \$5 million figure?
18 **A. I don't recall that.**
19 Q. Were there any negotiations whatsoever
20 with regard to this document?
21 **MR. MEISTER:** Referring to Exhibit 25?
22 **BY THE WITNESS:**
23 **A. The \$5 million you mean?**
24 **BY MR. GRIVER:**
25 Q. Yes.

Page 386

1 GINGER
2 What do you mean by close to the
3 divorce?
4 **A. It was close to -- not the divorce, the**
5 **arbitration that we had. We had arbitration**
6 **after the divorce.**
7 Q. And do you know when this arbitration
8 ended?
9 **A. I don't remember the date.**
10 **MR. MEISTER:** We would like to take a
11 five-minute break while you are searching.
12 **MR. GRIVER:** I have it right here.
13 **THE WITNESS:** Okay. So ask me.
14 **BY MR. GRIVER:**
15 Q. The final arbitration award is dated
16 May 6, 2008. It is Dalia Exhibit 11 to this
17 deposition.
18 So this was during the --
19 **A. During, yeah, yeah, I see. It is here.**
20 **MR. MEISTER:** Can we take a break now?
21 **MR. GRIVER:** Last question, then we
22 will take a break.
23 **BY MR. GRIVER:**
24 Q. Was this agreement provided to the --
25 provided as part of the arbitration by you or by

Page 387

1 GINGER
2 Sagi?
3 **A. No.**
4 **MR. GRIVER:** Okay. We can take a
5 break.
6 (WHEREUPON, a recess was had from
7 3:04 p.m. to 3:10 p.m.)
8 **MR. GRIVER:** Back on the record.
9 **BY MR. GRIVER:**
10 Q. Mrs. Genger, I am going to have to
11 correct one thing on the record. If you look at
12 the December 17, 2007 --
13 **A. Wait a second.**
14 Q. -- letter, it says you will be paid not
15 \$30,000 a year over the next 25 years, but
16 \$30,000 a month --
17 **A. That's true.**
18 Q. -- over the next 25 years.
19 So my question to you is, has TPR been
20 paying that amount of money to you, \$30,000 a
21 month --
22 **A. Yeah.**
23 Q. -- since January 15, 2008?
24 **A. That was actually the amount that the**
25 **judge awarded me when we had -- the beginning**

Page 388

1 GINGER
2 **when we were divorcing, that's the amount that**
3 **the judge awarded me monthly, by the way.**
4 Q. Okay. I am just asking whether TPR has
5 been paying you \$30,000 a month installments --
6 **A. They were paying me, yeah.**
7 Q. Before the redemption of the 250
8 shares?
9 **MR. MEISTER:** I'm sorry?
10 **BY THE WITNESS:**
11 **A. Before the redemption?**
12 **MR. MEISTER:** New question.
13 **BY THE WITNESS:**
14 **A. No. No. They didn't pay me anything**
15 **before they got the shares.**
16 **BY MR. GRIVER:**
17 Q. Since January 15 of 2008, as provided
18 in this letter dated December 17, 2007. That's
19 what I am looking at, Mrs. Genger.
20 **A. Yeah.**
21 Q. It says that you will receive \$30,000 a
22 month starting on January 15, 2008. So my
23 question to you is, has TPR been paying you
24 \$30,000 a month since January 15, 2008?
25 **A. I have to check and come back to you.**

Page 389

1 GINGER
2 Q. You don't --
3 **A. I have to check and come back to you.**
4 Q. Well, let me ask you this: Last month,
5 did you get a check from TPR on January 15, 2013?
6 **A. Yeah, I am getting checks from TPR.**
7 Q. Are you getting checks for these 250
8 shares? That's what I am asking you.
9 **A. Yeah. I am getting checks from TPR for**
10 **the shares. I mean, what's -- it is a new**
11 **question?**
12 Q. And you have been receiving \$30,000 a
13 month since January 15, 2008 for these 250
14 shares?
15 **A. I am receiving not exactly \$30,000,**
16 **because I don't need exactly \$30,000. When I --**
17 **this is a document between TPR, right, and me.**
18 Q. Correct.
19 **A. Okay. Now, whenever I need and I don't**
20 **need, whenever there is a necessity for me to get**
21 **money, I ask for the money. If there's no need,**
22 **I don't ask for it.**
23 Q. And you ask for that money from Sagi?
24 **A. From TPR.**
25 Q. And through Sagi -- you let Sagi know

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 390

1 GINGER
2 that you need money and he gives you?
3 **A. There's nobody else there.**
4 Q. And --
5 **A. I mean, who else?**
6 Q. And is it however much money you need
7 or is it limited to \$30,000?
8 **A. It is limited to whatever they owe me.**
9 Q. And is there a subsequent document of
10 any kind memorializing that change in the terms
11 of the agreement?
12 **MR. MEISTER:** Asked and answered. So,
13 objection.
14 **BY THE WITNESS:**
15 **A. I don't recall if there is any**
16 **document.**
17 **BY MR. GRIVER:**
18 Q. When you gave your shares --
19 **A. You mean redeem, right?**
20 **MR. MEISTER:** Don't use that word
21 again.
22 **THE WITNESS:** He said "redeem" so I
23 have to ask.
24 **MR. MEISTER:** You don't have to ask.
25 **BY MR. GRIVER:**

Page 391

1 GINGER
2 Q. When you signed over your stock
3 certificates to TPR as part of the redemption,
4 did you keep a copy for your records?
5 **A. I am sure there is a copy somewhere.**
6 Q. Okay. I would ask for a copy of those.
7 **A. It is probably TPR has it.**
8 Q. No, I asked whether you kept a copy.
9 **MR. MEISTER:** And she said she is sure
10 there is a copy.
11 **BY THE WITNESS:**
12 **A. I don't know. If I had it, I gave it**
13 **to Sagi. I don't know if I kept for my records**
14 **because I thought that Sagi wouldn't ask me again**
15 **for 250 shares.**
16 **BY MR. GRIVER:**
17 Q. Okay. If TPR redeemed your 250 shares,
18 then D&K owned -- okay.
19 Did TPR give you anything when you gave
20 them the stock certificates? Any document, did
21 they give you any document?
22 **A. When I give them the shares?**
23 Q. When you signed over the shares.
24 **A. If they gave me any document?**
25 Q. Yes.

Page 392

1 GINGER
2 **A. I don't remember if they did.**
3 **MR. GRIVER:** To the extent that
4 Mrs. Genger has a copy of that, I would
5 appreciate that.
6 **THE WITNESS:** Okay.
7 **BY MR. GRIVER:**
8 Q. Did TPR give you anything after you
9 signed over the stock certificates to it?
10 **MR. MEISTER:** You mean anything other
11 than the checks? Money?
12 **BY MR. GRIVER:**
13 Q. Anything other than the checks?
14 **A. You mean like gold, jewelry? What do**
15 **you mean?**
16 Q. Any kind of documentation.
17 **A. Again, after I gave them the 250**
18 **shares, if they gave me any additional some kind**
19 **of papers?**
20 Q. Yes.
21 **A. To establish that there is some kind of**
22 **an exchange, you mean?**
23 Q. Yes.
24 **A. I don't remember, but --**
25 Q. To the extent you have copies of these

Page 393

1 GINGER
2 checks from TPR memorializing these payments --
3 **A. Okay.**
4 Q. -- these monthly payments, I would --
5 **A. Appreciate.**
6 Q. -- appreciate a copy.
7 When you get these checks, are these
8 checks from TPR or are these checks from Sagi, or
9 is this from some other company?
10 **A. No. They are not checks from Sagi.**
11 Q. Are they checks from TPR?
12 **A. I couldn't say.**
13 Q. Do you recall what entity's checks
14 these are?
15 **A. No, I cannot.**
16 Q. So as we sit here today, you are not
17 sure those checks are TPR checks?
18 **A. I didn't say that they are checks. You**
19 **are assuming that they are checks.**
20 Q. Okay. Do you get checks?
21 **A. No.**
22 Q. Do you get wire transfers?
23 **A. Yes.**
24 Q. Are these wire transfers from TPR
25 accounts?

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 394

1 GINGER
2 A. I don't know.
3 Q. Are these wire --
4 A. I think --
5 Q. -- transfers from Sagi?
6 A. No, not from Sagi.
7 Q. How do you know they are not from Sagi,
8 but you don't know anything else?
9 A. I know that it is not from Sagi.
10 Q. How?
11 A. Because Sagi is not supporting me. He
12 cannot afford to support me.
13 Q. Are these checks from -- are these
14 checks from E&G -- strike that.
15 Are these wire transfers from E&G?
16 MR. MEISTER: E&G?
17 MR. GRIVER: E&G.
18 BY THE WITNESS:
19 A. What is E&G?
20 BY MR. GRIVER:
21 Q. It is a company that's -- it's a
22 company that Sagi has.
23 A. No.
24 Q. Are these --
25 A. I don't know what is E&G.

Page 395

1 GINGER
2 Q. Are these wire transfers from Batzad?
3 A. No.
4 Q. B-a-t-z-a-d.
5 A. I don't remember if they are.
6 Q. Okay. These wire transfers, do you
7 know what bank they are coming from?
8 A. No.
9 Q. Do you know what bank they are going
10 into?
11 A. To my bank.
12 Q. And which bank is that?
13 A. Citibank.
14 Q. Citibank?
15 A. Yes.
16 Q. Do you know which specific branch?
17 MR. MEISTER: Which specific branch the
18 wires go into?
19 MR. GRIVER: Yes. It has been a long
20 day.
21 MR. MEISTER: Yes, it has.
22 BY MR. GRIVER:
23 Q. Do you know the account, do you know
24 which account it goes into?
25 A. If I know my account number by heart?

Page 396

1 GINGER
2 No, I don't.
3 MR. MEISTER: He doesn't want the
4 account. He wants to know whether it is your
5 account --
6 BY THE WITNESS:
7 A. My account. My account.
8 BY MR. GRIVER:
9 Q. It goes into your account?
10 A. The -- yes.
11 Q. The account for Dalia Genger?
12 A. Yes.
13 Q. Okay. Upon redemption, D&K LP then
14 would have controlled approximately 96 percent of
15 TPR, is that your recollection?
16 MR. MEISTER: You are using the word
17 "redemption." If you mean redemption or sale --
18 BY THE WITNESS:
19 A. I am losing you now. If it is D&K and
20 this -- I am losing. I don't understand any more
21 what you are saying.
22 BY MR. GRIVER:
23 Q. When shares are redeemed, they become
24 treasury shares, and they no longer count towards
25 the percentage of ownership. So that means if

Page 397

1 GINGER
2 your 250 shares were redeemed by TPR, it made the
3 remaining shares more valuable, which is why
4 redeeming the shares allowed the Orly trust and
5 the Sagi trust to share equally.
6 A. I have to consult an accountant. I
7 don't know what you are --
8 MR. MEISTER: Wait for a question.
9 BY THE WITNESS:
10 A. I don't know what you are talking
11 about.
12 MR. MEISTER: Wait until there's a
13 question.
14 BY MR. GRIVER:
15 Q. To your knowledge, was there ever a
16 time when D&K LP owned 96 percent of TPR?
17 A. 96 percent of TPR?
18 Q. Yes.
19 A. I am getting confused.
20 Q. Well, I will just repeat it again. I
21 think it is a simple question.
22 Was there ever a time to your
23 understanding when D&K LP owned approximately 96
24 percent of TPR?
25 A. In the beginning of history, before we

Page 398

1 **GINGER**
 2 **got divorced, when it was --**
 3 Q. How about after December 17 of 2007,
 4 did D&K LP own approximately 96 percent of TPR?
 5 A. Can you ask me again, what is the date?
 6 What -- can we schedule another date? I am
 7 getting --
 8 **MR. MEISTER:** Read the question back.
 9 He is referring to this date.
 10 **THE WITNESS:** What are you saying now?
 11 **MR. GRIVER:** Repeat the question,
 12 please.
 13 (WHEREUPON, the record was read by
 14 the reporter as requested.)
 15 **BY THE WITNESS:**
 16 A. I don't know. That's my answer.
 17 **BY MR. GRIVER:**
 18 Q. What was the effect on the Orly trust
 19 of the redemption?
 20 **MR. MEISTER:** I'm going to object to
 21 the form of the question.
 22 **BY THE WITNESS:**
 23 A. The whole exercise was for me to be
 24 available for Orly to be a trustee. I don't know
 25 what you are asking me now.

Page 399

1 **GINGER**
 2 **BY MR. GRIVER:**
 3 Q. All right. Let me show you what I am
 4 going to mark as Exhibit 26.
 5 (Dalia Exhibit 26, document,
 6 marked.)
 7 **MR. GRIVER:** Did she answer the last
 8 question?
 9 (WHEREUPON, the record was read by
 10 the reporter as requested.)
 11 **BY THE WITNESS:**
 12 A. Now, can I read this quietly? Because
 13 it is hard for me to concentrate already.
 14 **BY MR. GRIVER:**
 15 Q. Sure.
 16 A. (Witness reading document).
 17 Okay. Now, when you say security
 18 agreement, you mean the note, that D&K note?
 19 Q. Yes, the D&K note.
 20 A. I am asking you so it will be clear to
 21 me.
 22 Q. Yes. This is from the sale of the --
 23 from the UCC sale of the D&K note.
 24 **MR. MEISTER:** Is there a pending
 25 question?

Page 400

1 **GINGER**
 2 **BY MR. GRIVER:**
 3 Q. Mrs. Genger, let me ask you the
 4 question so when you go through it you will be
 5 able to know.
 6 A. So this was an auction --
 7 Q. On the date of the auction --
 8 A. Yeah.
 9 Q. -- who else owned TPR shares, to your
 10 knowledge?
 11 A. Except, I mean -- I mean, TPR,
 12 obviously, and I guess the D&K Limited, right.
 13 Q. Uh-huh. Rochelle Fang owned ten
 14 shares, I believe.
 15 A. You know, all these little things, I am
 16 not familiar with.
 17 Q. Anyone else that you know?
 18 **MR. MEISTER:** Just so it is clear, she
 19 says she is not familiar. You are telling her
 20 something and she says she is not familiar.
 21 **MR. GRIVER:** Okay.
 22 **BY THE WITNESS:**
 23 A. I am not familiar. I just understand
 24 that this is something that you showed me before,
 25 and I told you it is part of this auction, and I

Page 401

1 **GINGER**
 2 wasn't there, I don't know, and whatever you say.
 3 **BY MR. GRIVER:**
 4 Q. On that date did Sagi own shares?
 5 A. What?
 6 Q. On that date did Sagi own shares?
 7 A. He -- if he owned shares?
 8 Q. In TPR.
 9 A. I don't remember when he bought the
 10 shares from the group. I don't remember what
 11 date it was. Because Sagi -- no. Sagi --
 12 shares. I mixing things around. I'm sorry.
 13 Q. I am talking about TPR shares.
 14 A. Yes. TPR shares. Okay.
 15 Q. On this date, did Sagi own TPR shares?
 16 A. I don't know.
 17 Q. On this date did you own TPR shares?
 18 A. On this --
 19 Q. On February 27, 2009, did you own TPR
 20 shares?
 21 A. When did I sell the shares? I don't
 22 remember any more the date. December 17, '07,
 23 and when this took place? So, no, I didn't
 24 because this happened in February '09. So I
 25 didn't. I didn't because I sold my shares, so I

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 402

1 GINGER
2 didn't.
3 MR. GRIVER: Okay. I am going to ask
4 that the redacted bank statements be provided
5 evidencing those wire transfers from TPR.
6 THE WITNESS: What?
7 MR. GRIVER: That was to Mr. Meister.
8 THE WITNESS: Oh, okay.
9 MR. GRIVER: Not to you.
10 So I am clear on the record, what I
11 would like is redacted bank statements showing
12 the wire transfers into Mrs. Genger's account
13 from whatever source those transfers come.
14 BY MR. GRIVER:
15 Q. Whose idea was it, Mrs. Genger, to try
16 and settle the D&K note case without Orly Genger?
17 A. Whose idea was it to sell?
18 Q. To settle --
19 A. To settle?
20 Q. -- the case without Orly Genger, yes.
21 Strike that. Let's create a record.
22 On or about October --
23 A. Show me the papers so I remember.
24 MR. MEISTER: Wait for the question.
25 BY MR. GRIVER:

Page 403

1 GINGER
2 Q. Do you recall entering into a
3 settlement agreement trying --
4 A. There was some kind of settlement
5 hoping that we would finish this nightmare, yes.
6 Q. Okay. And whose idea was it to try and
7 enter into the settlement agreement?
8 A. All the people that wanted peace and
9 not war.
10 Q. Well, I would like a name instead of a
11 description. Whose idea --
12 A. My idea, my son's idea, TPR's idea.
13 Q. The lawyer's idea?
14 A. Yes. People who want to finish with
15 the case.
16 Q. Okay. Mr. Meister's idea?
17 A. Right.
18 Q. Mr. Dellaportas' idea?
19 A. But not your idea, because you want to
20 continue and continue with this.
21 MR. MEISTER: Just answer the question.
22 BY MR. GRIVER:
23 Q. Just answer the question.
24 A. So that's part of my answer.
25 Q. Just answer the question I asked.

Page 404

1 GINGER
2 A. Somebody who doesn't want to settle.
3 Don't you understand that?
4 Q. Your idea, correct?
5 A. Yes. I want to settle.
6 Q. Sagi's idea?
7 A. I hope you also want to settle.
8 MR. MEISTER: Excuse me. Dalia, just
9 answer the question, otherwise we will be here
10 today until midnight and tomorrow.
11 THE WITNESS: That's really incentive.
12 MR. GRIVER: Do you need a break,
13 Mrs. Genger?
14 THE WITNESS: I might need a break
15 soon.
16 MR. GRIVER: Why don't we take just a
17 break so that --
18 THE WITNESS: No, I am getting
19 frustrated because, you know, we want to finish
20 this. We want to finish this.
21 MR. MEISTER: How much longer do you
22 have, Yoav?
23 MR. GRIVER: I have the eight
24 agreements that involve the Manhattan Safety
25 Company and their attempt at settlement.

Page 405

1 GINGER
2 MR. MEISTER: That's it?
3 MR. GRIVER: That's it, and then a few
4 additional questions.
5 THE WITNESS: And what?
6 MR. MEISTER: No, no, Dalia.
7 Let's take a five-minute break.
8 MR. GRIVER: That's the key area.
9 MR. MEISTER: And I am going to suggest
10 that you and I go outside and get some fresh air.
11 THE WITNESS: Okay. Let's go.
12 (WHEREUPON, a recess was had from
13 3:34 p.m. to 3:51 p.m.)
14 MR. GRIVER: Exhibit 27.
15 (Dalia Exhibit 27, settlement
16 agreement, marked.)
17 BY MR. GRIVER:
18 Q. Mrs. Genger, do you recognize this
19 document? For the record, this document is
20 titled settlement agreement, and it's Bates
21 ranges DG 1101 to 1110.
22 Mrs. Genger, do you recognize this
23 document?
24 A. Although, it looks familiar --
25 MR. MEISTER: The question is --

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

Page 406

1 GENDER
2 **BY THE WITNESS:**
3 **A. Can I ask Bob something? Because --**
4 **BY MR. GRIVER:**
5 **Q. Is it a privilege issue?**
6 **A. I'm not sure if this is the settlement**
7 **agreement because I thought there was something**
8 **else.**
9 **Q. Well, there are additional documents,**
10 **but I will note on page 7 of the document, which**
11 **is Bates stamped DG 107, is your signature?**
12 **A. Right. Yes.**
13 **Q. But if you want to take a break and**
14 **ask --**
15 **A. I just want to look over it one more**
16 **time, okay.**
17 **Q. Yes.**
18 **MR. MEISTER:** While she's doing that, I
19 will note for the record that I thought we had
20 produced a copy which also had the counterpart
21 signature of TPR.
22 **MR. GRIVER:** You anticipated one of my
23 questions. Is there a counterpart signature of
24 TPR?
25 **MR. MEISTER:** Yes.

Page 407

1 GENDER
2 **THE WITNESS:** I'm not sure that that's
3 the exhibit I looked at.
4 **MR. GRIVER:** Do you know who signed it?
5 **MR. MEISTER:** I believe it was Yonite
6 Sternberg.
7 **MR. GRIVER:** She signed the amended and
8 restated.
9 **MR. MEISTER:** As far as I believe.
10 **BY THE WITNESS:**
11 **A. So, in general, what is the question?**
12 **So I will read it --**
13 **BY MR. GRIVER:**
14 **Q. I have a bunch of questions.**
15 **A. A bunch?**
16 **MR. MEISTER:** Start with the first one.
17 What's the pending question?
18 **BY MR. GRIVER:**
19 **Q. Whether there were any drafts of this**
20 **settlement agreement. That would be my first**
21 **question. Electronic or otherwise.**
22 **A. I don't know if there are drafts.**
23 **Q. So let me ask --**
24 **MR. GRIVER:** Is that on the record?
25 **THE COURT REPORTER:** Yes.

Page 408

1 GENDER
2 **BY MR. GRIVER:**
3 **Q. As we sit here today, you don't recall**
4 **there being any drafts of this agreement?**
5 **A. I don't recall.**
6 **MR. GRIVER:** Mr. Meister, I will
7 represent to you that we have not received any
8 drafts of the settlement agreement. Are there
9 drafts that have not been provided?
10 **MR. MEISTER:** I don't think we have any
11 drafts. I do know we have a copy which has -- or
12 signature page which has the signature for TPR.
13 **BY MR. GRIVER:**
14 **Q. Mrs. Genger, do you know who took the**
15 **laboring hand in drafting this settlement**
16 **agreement?**
17 **A. Who drafted this?**
18 **Q. Yes.**
19 Was it your lawyer, was it his lawyers?
20 Who took --
21 **A. Whoever signed it, their lawyers**
22 **drafted this document.**
23 **Q. Did Mr. Meister discuss with you any**
24 **drafts of the settlement agreement?**
25 **A. I do not remember.**

Page 409

1 GENDER
2 **Q. Do you recall making any changes to the**
3 **settlement agreement?**
4 **A. No.**
5 **Q. Was it your lawyers who, you know, had**
6 **the major responsibility of issuing a draft of**
7 **the settlement agreement for all parties, or did**
8 **your lawyers receive the settlement agreement for**
9 **comment?**
10 **A. No. It is -- it is a mutual --**
11 **(WHEREUPON, there was a short**
12 **interruption.)**
13 **MR. GRIVER:** Let's go back.
14 **BY MR. GRIVER:**
15 **Q. So we're clear, you did not make any**
16 **changes to the settlement agreement that --**
17 **A. I don't recall that there were any**
18 **changes. But the lawyers worked together in**
19 **order to come to this settlement.**
20 **Q. Which law firm or lawyer took the hand**
21 **in drafting this agreement?**
22 **MR. MEISTER:** Took the hand?
23 **MR. GRIVER:** Yes.
24 **MR. MEISTER:** Objection as to form.
25 **BY MR. GRIVER:**

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 410

1 GINGER
2 Q. Which lawyer --
3 A. Who participated --
4 Q. Someone had to be in charge of drafting
5 the settlement agreement and circulating it for
6 comments. Which lawyer or law firm did that?
7 A. It was -- this came as the lawyers came
8 together with ideas, and they put it in writing.
9 I don't think there was one single lawyer that
10 came with this and said "You sign, you sign, you
11 sign." It is a kind of cooperation between
12 parties that wanted to settle.
13 MR. GRIVER: Okay. Mr. Meister, to the
14 extent there are any drafts available, electronic
15 or otherwise, of the settlement agreement or the
16 amended and restated settlement agreement or any
17 of the other documents --
18 THE WITNESS: This I don't know.
19 MR. GRIVER: -- I would ask that they
20 be provided.
21 BY MR. GRIVER:
22 Q. How long did these discussions take to
23 reach the settlement agreement? Was it decided
24 in a day, in a week? How long?
25 A. I don't remember. I have no idea.

Page 411

1 GINGER
2 Q. Were these in-person discussions, were
3 they over the phone, were you involved in
4 these -- strike that.
5 Let's ask this: Were you involved in
6 any of these discussions?
7 A. Yes. I was there when it was
8 discussed.
9 Q. You were present?
10 A. Yeah.
11 Q. Where were you?
12 A. I think it was Bob's office. No?
13 Okay. I --
14 Q. Was it Duane Morris' offices? Sagi's
15 lawyer's office?
16 A. Sagi's office maybe.
17 Q. Sagi's lawyer's office?
18 A. Maybe, yeah, because I don't know, I
19 said something wrong, obviously.
20 MR. MEISTER: If you don't remember,
21 you don't remember.
22 BY THE WITNESS:
23 A. I thought it was there, but I was
24 wrong.
25 BY MR. GRIVER:

Page 412

1 GINGER
2 Q. Was there a lawyer there in these --
3 A. One of the lawyers.
4 Q. Okay. Was there a lawyer there in
5 these discussions representing you personally?
6 A. Representing me personally?
7 Q. Uh-huh.
8 A. You know that Bob represents me
9 personally and represents the trust.
10 Q. Okay.
11 A. So I didn't ask him at one moment, at a
12 certain moment if he's talking on this side of
13 his mouth or the other side of his mouth. I
14 don't know. I can't tell you.
15 Q. Mr. Meister was representing both the
16 trust and you personally in these settlement
17 negotiations?
18 A. No. This settlement is not between me.
19 It is between the trust.
20 Q. But it does release you from all
21 liability?
22 MR. MEISTER: Objection.
23 BY MR. GRIVER:
24 Q. Doesn't it?
25 A. Where does it say so?

Page 413

1 GINGER
2 Q. Let's take a look. Page 5, paragraph
3 4, mutual releases.
4 A. 1105?
5 Q. 1105, DG 1105, paragraph 4, mutual
6 releases.
7 A. Release one another. Including --
8 (Witness reading document).
9 Q. Okay.
10 A. Yeah. No. But I'm trying to see if
11 I'm part of this personally. I don't see
12 personally that I am represented here.
13 Q. You see that it --
14 A. I don't see personally, Dalia Genger.
15 Q. You see -- well, let me read it to you:
16 The parties to the settlement agreement hereby
17 irrevocably and fully release one another,
18 including all current directors, officers,
19 trustees, et cetera, et cetera.
20 You are the trustee, correct?
21 A. Right. As the trustee I am released,
22 but not personally.
23 Q. Okay. Well --
24 MR. MEISTER: Just so we are clear, it
25 releases the other parties. There's no release

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 414

1 GINGER
2 by the trust of the trustee.
3 **MR. GRIVER:** It says the parties to the
4 settlement agreement hereby irrevocably and fully
5 release one another.
6 **MR. MEISTER:** Right. One another.
7 **MR. GRIVER:** So the trust is released,
8 and the trustee is released.
9 **MR. MEISTER:** By TPR. I know you are
10 trying to mischaracterize this as the trust
11 releasing Dalia, but it is not there because the
12 trust didn't release Dalia.
13 **THE WITNESS:** You made sure it is not
14 there.
15 **BY MR. GRIVER:**
16 Q. D&K LP also released you as trustee,
17 correct?
18 A. If it says so. I don't remember.
19 Q. And motions for --
20 A. I was in the capacity as trustee, not
21 as Dalia Genger.
22 Q. Okay. Let's go -- why would it be in
23 the trust's best interest to release you as
24 trustee?
25 **MR. MEISTER:** Objection.

Page 415

1 GINGER
2 **BY MR. GRIVER:**
3 Q. From all claims?
4 **MR. MEISTER:** Objection. The trust
5 didn't release her, and I really don't like your
6 trying to confuse the witness, at 4:00, at the
7 end of a day, by misrepresenting a legal document
8 to a layperson.
9 **BY THE WITNESS:**
10 A. And I just said that I just went -- I
11 repeated. I repeated that we made sure that I
12 personally was not released.
13 **BY MR. GRIVER:**
14 Q. Okay.
15 A. Only as a trustee, not as an
16 individual. Please.
17 Q. Very good. Let's look at paragraph 8,
18 attorneys' fees.
19 A. What?
20 Q. Attorneys' fees. Do you understand
21 what paragraph 8 does?
22 A. Let me get to it first. Exhibit A, you
23 mean.
24 Q. Paragraph 8 on DG 1106.
25 A. I mean, it is not enumerated. Oh, I'm

Page 416

1 GINGER
2 sorry. Attorneys' fees.
3 Q. Do you understand what paragraph 8
4 does?
5 A. I have to read it. I am very slow.
6 Q. We will wait because it is important
7 you understand this document.
8 A. Yes. It takes me a long time. It is
9 hard for me.
10 Q. Let me know when I can ask you.
11 A. Okay. So ask me the question and then
12 I will read it again. Because it is difficult.
13 Q. This paragraph provides that if a
14 beneficiary of a party --
15 A. Of this agreement.
16 Q. Right. A beneficiary of a party of
17 this agreement. So a beneficiary of a party to
18 this agreement would be Orly?
19 A. Right. Orly trust you mean?
20 Q. No. It is because Orly is the
21 beneficiary --
22 A. Of the trust, okay.
23 Q. So if Orly either asserts a new claim
24 against TPR or D&K, or continues with an existing
25 claim against TPR and D&K and is unsuccessful,

Page 417

1 GINGER
2 then the trust is liable for the attorneys' fees
3 of D&K and TPR. That's what this paragraph does.
4 My question to you, Mrs. Genger, is how
5 is that in the benefit of the trust?
6 A. Okay. So what you are saying -- let me
7 see if I understand. Okay. That Orly here is a
8 beneficiary -- is a beneficiary, right?
9 Q. Correct.
10 A. Okay. Who else is a beneficiary except
11 Orly? I am asking you because I am not -- I
12 don't understand.
13 Q. The Orly Genger 1993 trust, who is the
14 beneficiary of the Orly Genger 1993 trust?
15 A. It is Orly. So who else is another
16 beneficiary?
17 Q. But Orly is a beneficiary?
18 A. Yes. I am saying yes. But are there
19 any other beneficiaries that we are talking here?
20 Q. Contingent beneficiaries, but a
21 beneficiary, Orly is the beneficiary?
22 A. Orly is beneficiary, yes, I agree.
23 Q. So if she either continues with her
24 claims or asserts a new claim against TPR or D&K
25 and is unsuccessful, the Orly trust is liable for

Page 418

1 GENDER
2 the attorneys' fees of D&K and/or TPR.
3 Did you understand that that was the
4 result of this paragraph when you signed it as
5 trustee on October 3, 2011?
6 A. I just want to understand. I want to
7 know if I understood. That Orly is a
8 beneficiary, if she continues --
9 Q. Yes.
10 A. -- to sue, to sue --
11 Q. Yes.
12 A. -- the other parties that are involved
13 in this agreement --
14 Q. Yes.
15 A. -- she -- the trust will be liable for
16 the cost of her suing, right?
17 Q. That's correct.
18 MR. MEISTER: If the defendant wins.
19 THE WITNESS: If the -- if she wins.
20 MR. MEISTER: If she loses and
21 defendants win.
22 BY THE WITNESS:
23 A. If she loses. If she loses, usually it
24 is customary --
25 BY MR. GRIVER:

Page 419

1 GENDER
2 Q. Not in America. No.
3 A. So what country is it?
4 Q. Let me ask you this: When you signed
5 this agreement --
6 A. No. The agreement is to make the
7 parties come to a point that they won't sue each
8 other, that they will come to a point when they
9 agree that we should come to terms where everyone
10 is satisfied with what it's getting and it is not
11 going to continue to sue.
12 Q. How is it in the Orly -- strike that.
13 First of all, when you signed this
14 agreement, did you understand the settlement
15 agreement when you signed it?
16 A. I thought I did.
17 Q. Did you review it with your attorneys?
18 A. Yes.
19 Q. Did they explain it to you?
20 A. Yeah.
21 Q. Did you understand that you were --
22 that you are providing that the Orly trust would
23 be paying attorneys' fees?
24 A. I don't want Orly to continue without
25 basis, I am saying, without basis. If she has

Page 420

1 GENDER
2 basis to sue, she should sue. But without basis,
3 she shouldn't sue any of the other participants
4 here because it cost money to the trust. And she
5 owns the trust, and she's going to lose money.
6 Q. And so --
7 A. And that's why we want everybody to
8 stop suing each other, because it costs money.
9 This is the settlement. That's why it is called
10 a settlement. People want -- they will stop
11 suing each other. That's the whole point.
12 Q. Whose idea was it to have this
13 attorneys' fees provision?
14 A. I don't know whose idea.
15 Q. And you thought it was --
16 A. We said that we --
17 Q. Just answer my question.
18 A. We work together. So I don't know if
19 it was Bob or John, or his assistant or Bob's
20 assistant, I do not know. I did not put it there
21 because I am not smart enough, okay, to write
22 this document. But one of the lawyers put it
23 there because settlement is settlement. We want
24 to finish with the story.
25 Q. And this meeting where this agreement

Page 421

1 GENDER
2 was reached, how long did this agreement take
3 place?
4 A. You asked me this.
5 Q. No. How long?
6 A. I don't remember.
7 Q. Half a day, one day, more than a day?
8 A. I don't remember. I really don't
9 remember.
10 Q. When you got there were they still
11 drafting the agreement, or was it ready for
12 signature when you got there?
13 A. I don't remember. There were so many
14 papers written, who can remember.
15 Q. In your previous answer you talked
16 about John. Who is John?
17 A. John Dellaportas. That is Sagi's
18 lawyer, I think. I think that's the one.
19 Q. What other lawyers were there?
20 A. I don't remember there was another
21 lawyer.
22 Q. Is there anyone representing -- were
23 there any other lawyers there representing Sagi
24 other than Mr. Dellaportas?
25 A. I don't believe so.

DALLA GINGER

Page 424

Page 425

25 Q. It is after subpart A. It is about 1.

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

Page 426

1 GENDER
2 2, 3, 4 -- it is about six lines down.
3 A. Okay, okay. So what are you
4 complaining, that TPR --
5 MR. MEISTER: He is not complaining.
6 He may be asking you a question. He hasn't yet.
7 BY MR. GRIVER:
8 Q. You will agree with me that in this
9 paragraph 1, the OG trust disposed of its
10 interest in TPR and gave them to TPR?
11 MR. MEISTER: Objection. That's not
12 what it says.
13 BY MR. GRIVER:
14 Q. Well, let me put it this way. What is
15 your understanding of what the OG trust did in
16 order to get into this settlement? What was its
17 consideration that it provided? As trustee, what
18 consideration did the OG trust provide?
19 A. That the Orly Genger trust got from TPR
20 \$100,000 for legal fees. Okay?
21 Q. So the lawyers got paid. Good.
22 What else?
23 A. Aren't you one of the lawyers?
24 Q. What else?
25 A. You should look for it.

Page 427

1 GENDER
2 Q. What else?
3 A. (Witness reading document).
4 What are you asking me? What is what?
5 Q. I am asking, as trustee, what was
6 the -- what did the OG trust give up in order to
7 reach the settlement?
8 A. Okay. What I see here is that TPR
9 relinquished all economic interest in favor of
10 Orly Genger trust, okay. It is a good thing,
11 right?
12 Q. I am asking you what did the OG trust
13 give up?
14 A. OG trust?
15 Q. What did the Orly Genger trust give up
16 in order to reach settlement?
17 A. Let me continue to read it because in
18 the meantime it just -- it is getting to
19 something.
20 (Witness reading document).
21 I don't see anything here that the Orly
22 Genger trust is giving up, actually.
23 Q. At the time that you signed this
24 agreement, what was your understanding as to what
25 the OG trust gave up?

Page 428

1 GENDER
2 A. Orly Genger trust, my understanding was
3 that Orly Genger trust was getting things --
4 Q. And giving up nothing?
5 A. In this particular paragraph, I don't
6 see she is giving up anything.
7 Q. Look at --
8 A. She is getting economic benefits from
9 the shares, that we know that she should maybe
10 not get if TPR would not be generous enough to do
11 it.
12 Q. So at the time that you signed this
13 agreement, you did not believe that the OG trust
14 was giving up anything?
15 A. I am saying based on this.
16 Q. Please answer my question.
17 At the time that you signed this
18 agreement, wasn't it your understanding that the
19 OG trust was giving up nothing?
20 A. There would be some release.
21 Q. Other than claims against the other
22 people --
23 A. Yeah.
24 Q. -- you did not believe the OG trust was
25 giving up anything else?

Page 429

1 GENDER
2 A. Is this a question --
3 Q. It is.
4 A. -- or a statement?
5 A question? I have to read the whole
6 thing because I --
7 Q. Read my question back.
8 A. No, I have to read the whole thing
9 because I, so far, did not find anything.
10 Q. I am just asking, at the time that you
11 signed the agreement, what did you believe that
12 the OG trust was giving up?
13 A. At the time I believe that Orly Genger
14 trust, its debt was reduced to \$4 million -- I
15 mean, the note was reduced to \$4 million.
16 Q. I am not talking about --
17 A. To 4 and a half million. What, it is
18 not true?
19 Q. Go ahead and answer the question as you
20 see fit.
21 A. You have \$100,000 from TPR, okay. You
22 got economic benefits for the shares of TRI,
23 okay. And I am thinking what else. There was
24 something else that they got. What the trust
25 gave, I, at the moment, cannot see. Maybe you

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

Page 430

1 **GINGER**
2 **can point it out to me. I don't see it here.**
3 Q. Can I have that read back?
4 **A. And the release.**
5 Q. If you've finished, I will have the
6 court reporter read it back so that you can
7 listen to your answer and add anything that you
8 may have missed.
9 (WHEREUPON, the record was read by
10 the reporter as requested.)
11 **THE WITNESS:** Okay. So tell me what --
12 **BY MR. GRIVER:**
13 Q. Any other benefits that you believe the
14 trust got from this agreement?
15 **A. The release.**
16 Q. Anything else?
17 **A. I have to read it because I am really**
18 **tired, and I have to start reading it from the**
19 **beginning.**
20 Q. Look at paragraph 1-B to show what the
21 OG trust gave up.
22 **A. 1-B.**
23 Q. 1-B, page 4, DG 1104.
24 **A. Consideration.**
25 Q. Look at B. The OG trust.

Page 431

1 **GINGER**
2 **A. B, that's what we looked at before,**
3 **right?**
4 Q. Yes.
5 **A. The OG trust.**
6 (Witness reading document).
7 **If you mean that it is OG trust -- how**
8 **do you mean, that the transfer to TPR, it's**
9 **limited partnership interest in D&K, that's what**
10 **you meant?**
11 Q. Yes.
12 Did OG trust transfer to TPR its
13 limited partnership interest in D&K, the D&K
14 interest; do you see that?
15 **A. Yes.**
16 Q. So on that date you, as trustee,
17 transferred to TPR the trust's D&K interest,
18 correct?
19 **A. The trust's D&K interest.**
20 Q. Yes. That's how it is defined here.
21 **A. Right. I am trying to think on -- I am**
22 **getting confused already.**
23 Q. Well, I will start it simple.
24 **A. I am confused already.**
25 Q. On the date you signed this settlement

Page 432

1 **GINGER**
2 agreement --
3 **A. Yeah.**
4 Q. -- did you know that the trust was
5 transferring to TPR its D&K interest; yes or no?
6 **A. It says so. It says so. But I just --**
7 **I just for my own thing, because I just -- I now**
8 **am getting confused. What was the trust D&K**
9 **interest that was given up?**
10 Q. Well, my first question is, at the time
11 that you signed this agreement, did you know that
12 the Orly Genger trust was transferring to TPR its
13 D&K interest? Did you know that?
14 **A. Can you repeat this?**
15 Q. Sure.
16 On the day that you signed the
17 settlement agreement, did you understand that the
18 Orly Genger trust was transferring to TPR its D&K
19 interest?
20 **A. Are you talking now about the sale of**
21 **the TPR shares?**
22 Q. No, I am talking about --
23 **A. I am getting completely confused now.**
24 **I, you know --**
25 Q. Mrs. Genger, it says in this document

Page 433

1 **GINGER**
2 that the OG trust hereby transfers to TPR its D&K
3 interest.
4 At the time that you signed the
5 agreement, did you understand that the OG trust
6 was giving up its D&K interest?
7 **A. I don't know what's the D&K interest.**
8 Q. Okay. Did you understand --
9 **A. I don't know. Maybe at the time I**
10 **understood, but right now I can't understand it**
11 **any more. I am confused completely.**
12 Q. Did you understand on or about October
13 3, 2011 when you signed this agreement that the
14 OG trust was a limited partner in D&K?
15 **A. I don't know how to answer this**
16 **question.**
17 Q. On the date that you signed this
18 agreement, what was the monetary value of the
19 Orly Genger trust's D&K interest?
20 **A. This is where I am getting confused.**
21 Q. Had you valued the D&K interest in any
22 way before --
23 **A. Whatever you are asking now, I don't**
24 **know how to answer because I am completely**
25 **confused. Really. I am confused. Either I have**

ONLY GINGER VS.
DALIA GINGER

Pg 77 of 150

DALIA GINGER
February 7, 2013

Page 434

1 **GINGER**
2 to come again or --
3 **MR. GRIVER:** Let's take a break.
4 **THE WITNESS:** I am confused already.
5 **MR. GRIVER:** Let's take a break.
6 Off the record.
7 (WHEREUPON, a recess was had from
8 4:31 p.m. to 4:35 p.m.)
9 **MR. GRIVER:** On the record.
10 The parties have agreed to continue
11 Mrs. Genger's deposition to Monday, the 11th of
12 February, commencing at 11:00 a.m., to take half
13 a day, which means three to four hours of
14 questioning.
15 (WHEREUPON, at 4:35 p.m., by
16 agreement of the parties, the
17 deposition of D. GINGER was
18 adjourned until Monday, February
19 11, 2013, at 11:00 a.m., and the
20 deponent reserved her right to
21 read and sign the transcript.)
22 * * * * *

Page 435

1 **A C K N O W L E D G M E N T**
2
3 I, DALIA GINGER, hereby certify that I
4 have read the entire transcript of my testimony
5 taken under oath in my deposition of February 7,
6 2013 in the captioned matter on the title page
7 hereof, or the same has been read to me, and the
8 same is true and accurate, save and except for
9 changes and/or corrections, if any, as indicated
10 by me on the ERRATA SHEET hereof, with the
11 understanding that I offer these changes as if
12 still under oath.
13 Signed this ____ day of _____, 20__.
14
15
16
17 DALIA GINGER
18
19
20 **SUBSCRIBED AND SWORN BEFORE ME**
21 **THIS ____ DAY OF _____, 20__.**
22
23
24 Notary Public, State of _____
25 My Commission Expires: _____

Page 436

1 **C E R T I F I C A T E**
2
3 STATE OF NEW YORK)
4)
5 COUNTY OF NEW YORK)
6
7 I, ANNETTE M. MONTALVO, Registered
8 Merit Reporter and Notary Public within and for
9 the State of New York, do hereby certify:
10 That DALIA GINGER, the witness whose
11 deposition is hereinbefore set forth, was duly
12 sworn by me and that such deposition is a true
13 record of the testimony given by such witness.
14 I further certify that I am not related
15 to any of the parties to this action by blood or
16 marriage and that I am in no way interested in
17 the outcome of this matter.
18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 20th day of February, 2013.
20
21
22
23
24 -----
25 Annette M. Montalvo, RMR
My commission expires: January 31, 2015

Page 437

1 *****ERRATA*****
2 **ELLEN GRAUER COURT REPORTING CO. LLC**
3 126 East 56th Street, Fifth Floor
4 New York, New York 10022
5 212-750-6434
6
7 **NAME OF CASE: GINGER vs. GINGER**
8 **DATE OF DEPOSITION: FEBRUARY 7, 2013**
9 **NAME OF WITNESS: DALIA GINGER**
10
11

PAGE	LINE	FROM	TO	REASON
8				
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20				
21				

22 Subscribed and sworn before me
23 this ____ day of _____, 20__.
24
25 (Notary Public) My Commission Expires: _____

ORLY GENDER VS.
DALIA GENDER

Pg 78 of 150

DALIA GENDER
February 7, 2013

	413:4,5,5		25;373:18;378:14;	5 (3)
\$	1106 (1)	2	379:24;380:10;385:21;	323:15;370:17;413:2
	415:24		387:15,18	5/19/2009 (1)
\$100,000 (3)	1110 (1)	2 (6)	250 (17)	327:10
359:25;426:20;429:21	405:21	253:18;308:5,6;315:2;	372:4,17;378:16,18;	50/50 (3)
\$180,000 (2)	11th (1)	342:7;426:2	379:4;380:19;381:20;	362:4,16,18
379:3;380:18	434:11	2:23 (1)	382:4,7,8;388:7;389:7,	
\$30,000 (10)	12 (2)	359:15	13;391:15,17;392:17;	6
387:15,16,20;388:5,	273:6;284:4	2:26 (1)	397:2	
21,24;389:12,15,16;	12/17/2007 (1)	359:15	26 (2)	6 (10)
390:7	370:10	20 (9)	399:4,5	234:7,23;236:19;
\$4 (2)	12:06 (1)	247:20;255:2,6;	2600 (1)	237:4,5;322:3;323:2,6,
429:14,15	304:6	263:21;326:3,4,6,21;	342:18	15;386:16
\$5 (8)	12:18 (1)	327:16	261 (2)	
372:5;373:21;375:17;	304:6	20 (2)	263:2;264:6	7
379:10;382:5;384:7;	12:43 (1)	435:13,21	27 (3)	
385:17,23	324:16	2006 (1)	401:19;405:14,15	7 (2)
\$8 (1)	12-17 (1)	315:2		406:10;435:5
261:8	372:16	2007 (8)	3	
	12-17-07 (4)	370:14;372:4;374:3,5,		8
0	370:16;372:13;	11;387:12;388:18;398:3	3 (14)	
	379:24;380:12	2008 (28)	255:13;330:18,19,21;	8 (11)
07 (1)	13 (3)	274:15;277:24;279:8,	331:4;370:24,25;371:2;	235:24,25;236:21;
401:22	231:7;325:5;328:6	13;281:9,20;292:15,24;	376:7;418:5;422:17;	273:2;312:18;415:17,21,
09 (1)	13-20 (2)	293:2;300:2,4,18;305:5,	423:3;426:2;433:13	24;416:3;425:4,10
401:24	263:3;264:6	10,15;306:10,11,12,15,	3,000 (3)	8/2/2006 (1)
	14 (3)	18;324:4;376:7;386:16;	348:25;349:23;351:10	314:22
1	376:5,6,16	387:23;388:17,22,24;	3:04 (1)	8/22/2008 (1)
	146 (3)	389:13	387:7	279:24
1 (11)	294:19;295:3,5	2009 (4)	3:10 (1)	
232:11;279:13;308:5,	147 (3)	279:14;324:7;327:14;	387:7	9
6;329:20;330:3;370:17;	294:19;295:3,5	401:19	3:34 (1)	
425:16,20,25;426:9	15 (16)	2010 (5)	405:13	9 (6)
1,102.8 (1)	231:5;232:12;255:2,4,	331:24;332:16;342:6,	3:51 (1)	280:18,18;298:19,25;
350:12	6,19;305:13;307:21;	7;351:7	405:13	299:9,17
1:38 (1)	312:19;379:2;387:23;	2011 (6)	30 (14)	96 (5)
324:17	388:17,22,24;389:5,13	339:10;418:5;423:3;	311:13;312:2,6,11,12,	396:14;397:16,17,23;
10 (4)	16 (5)	425:4,10;433:13	22;313:4,25;314:15,19;	398:4
376:5,7,20,23	253:19;266:16,17;	2012 (2)	371:4,12,14,16	
100 (1)	271:14,15	231:7;271:17	31 (1)	A
381:4	17 (19)	2013 (4)	274:15	
102.80 (1)	279:22,23;280:6;	379:2;389:5;434:19;	32 (2)	abided (1)
284:12	281:8;283:7;284:22;	435:6	280:16,16	313:24
107 (1)	285:12;304:10;370:14;	207 (2)	35 (1)	ability (2)
406:11	372:3;374:2,5,11,13,15;	237:8,11	260:10	276:5,6
11 (6)	387:12;388:18;398:3;	208 (2)		able (7)
281:14;283:25;284:4;	401:22	254:20;255:2	4	245:8,17;261:15;
376:7;386:16;434:19	18 (13)	21 (12)		262:5;263:7;346:5;
11/19/2012 (1)	283:5;292:7,11;	273:3,4,5,8,16;327:8,	4 (14)	400:5
266:18	294:15;298:2;302:14,18,	9,12;328:17,20,22;342:5	246:11;279:8,13;	Absolutely (1)
11/2008 (1)	20;351:7;374:7,11,13,22	22 (11)	316:7;317:18;323:16;	262:22
292:8	19 (4)	237:11;281:9,12;	324:4;339:10;376:8;	accept (2)
11:00 (2)	271:17;314:21,24;	283:21,23;288:13;	413:3,5;426:2;429:17;	337:23;338:6
434:12,19	327:14	292:16;305:5,9;339:3;	430:23	acceptable (2)
11:19 (1)	191 (1)	351:18	4:00 (1)	337:24;338:7
266:21	253:16	22-A (3)	415:6	account (15)
11:24 (1)	1993 (7)	284:9,11,13	4:31 (1)	246:9;366:8;367:7;
266:21	293:13;294:2;296:5;	23 (4)	434:8	368:10,10;395:23,24,25;
1101 (1)	312:24,24;417:13,14	341:14,15,25;361:3	4:35 (2)	396:4,5,7,7,9,11;402:12
405:21	1-B (3)	24 (4)	434:8,15	accountant (1)
1104 (2)	430:20,22,23	339:8;369:9,10,12	5	397:6
425:20;430:23		25 (13)		accounts (2)
1105 (3)		370:8,9,14;372:9,20,		360:6;393:25

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

accurate (2) 332:21;435:8	260:2	280:5,10;333:2,17; 429:19	406:22	assumed (2) 269:13;276:10
achieve (1) 312:5	affect (3) 256:15,17;277:23	air (1) 405:10	Apparently (3) 270:15;334:17;366:7	Assumes (4) 268:23;269:18; 332:23;337:25
act (3) 276:5,6,8	affidavit (5) 328:17,23;376:6,16,19	al (1) 369:14	appear (1) 245:17	assuming (3) 259:7;310:23;393:19
action (57) 233:21;272:7;273:15; 274:16,20,22,25;275:2, 8,12,21;276:12,21; 277:7,8,10;278:5;286:3; 330:4;339:4,10;340:24; 343:19;345:25,25; 346:10,24;348:24; 349:13,21;353:22; 358:16,17,20,23;359:18, 20;360:4,7;361:2,6; 362:19,20,25;363:21,25; 364:13;365:5,13,17,25; 366:2;368:2,9,13,22; 425:11	affirmation (2) 266:17;271:15	allegation (1) 272:18	appointed (1) 267:5	attached (2) 380:9,13
actions (14) 248:21;250:21;254:8; 267:14,23;272:9,10; 277:23;279:6,17; 340:20;343:23;367:15, 20	affirmed (2) 230:2,5	allegations (2) 339:17;358:16	appreciate (3) 392:5;393:5,6	attempt (4) 251:4;298:15;323:3; 404:25
action's (1) 343:18	afford (1) 394:12	allowed (7) 230:17;275:13,16; 279:17;344:17;375:16; 397:4	apprise (3) 243:15;244:5,10	attempted (1) 374:20
actual (2) 308:17;313:12	again (39) 230:18,20;237:4; 244:7;245:15;248:15; 249:7;252:5;260:12,13; 263:24;287:4;305:6; 306:8;309:5;310:12; 317:10;319:17;331:13; 335:15;344:4;346:8; 349:11;354:19;355:2; 356:11,12,16,17;379:13; 380:3,3;390:21;391:14; 392:17;397:20;398:5; 416:12;434:2	aloud (4) 234:14,15;331:3; 371:17	apprised (2) 291:21;353:17	attempting (2) 250:22;298:11
Actually (15) 245:14;253:10;254:5; 272:13,15;273:3; 274:17;312:12;315:11, 15,20;354:22;373:2; 387:24;427:22	against (20) 267:15;272:9;287:6,7; 312:21;313:4,12;316:9, 17;323:3,8;343:3; 362:19;365:7;367:21; 376:15;416:24,25; 417:24;428:21	Although (1) 405:24	appropriate (1) 292:2	attend (1) 329:11
add (2) 288:11;430:7	ago (4) 263:21;300:12; 315:13;322:5	always (1) 383:14	approving (3) 381:19;382:2,4	attention (2) 253:9;325:4
added (2) 284:19,23	agree (4) 337:23;417:22;419:9; 426:8	amend (2) 231:22;286:4	approximately (3) 396:14;397:23;398:4	attorney (5) 254:12;265:2;290:15; 300:17;337:3
Adding (1) 375:10	agreed (4) 312:20;339:21; 378:24;434:10	amended (19) 271:16;272:4;274:7,9; 280:19;281:10;283:24; 288:13;290:8,10;291:3; 292:13;299:2;330:4,9; 371:2;380:14;407:7; 410:16	arbitration (5) 386:5,5,7,15,25	attorneys (6) 335:8;336:23;337:8, 14;342:25;419:17
additional (6) 284:23;375:10; 392:18;405:4;406:9; 425:12	agreeing (1) 365:8	Amending (1) 280:14	argue (3) 320:16,20;425:8	attorneys' (8) 415:18,20;416:2; 417:2;418:2;419:23; 420:13;422:8
addresses (1) 342:14	agreement (69) 280:20;281:11,18; 286:4;288:14;290:9; 291:4;292:14;304:10,12, 14;312:9;313:24;324:2; 370:16;379:22;380:7,13, 22;386:24;390:11; 399:18;403:3,7;405:16, 20;406:7;407:20;408:4, 8,16,24;409:3,7,8,16,21; 410:5,15,16,23;413:16; 414:4;416:15,17,18; 418:13;419:5,6,14,15; 420:25;421:2,11; 422:20;423:7,10; 427:24;428:13,18; 429:11;430:14;432:2,11, 17;433:5,13,18;434:16	amendment (25) 279:23;281:9,17; 282:10,12,19,23;283:14; 284:20;285:5,8,11; 287:25;289:20;290:8, 15;291:2,12,22;292:7, 12;296:17,19;298:13; 304:9	arguing (1) 424:7	auction (18) 242:17,20,22;243:13, 21;247:7;253:23; 255:23;256:11,15,18; 264:24;265:4;334:9,16; 400:6,7,25
adjourned (1) 434:18	agreements (1) 404:24	amendments (1) 299:8	arguments (1) 422:14	August (13) 274:14;281:9,20; 305:4,9,15;306:9,12,18; 315:2;351:7;425:4,10
advance (2) 369:18,24	ahead (5)	America (1) 419:2	Arie (34) 237:20;238:13,24; 239:7,11,19;240:6,8,11, 22;246:15,21;247:5,9; 255:23;256:10,24;257:7, 14;259:7,18,25;260:15; 261:19;262:5,8;263:11; 265:14,18;342:17; 343:3;351:9;362:19,25	authority (1) 281:12
advertise (1) 244:2		amount (3) 387:20,24;388:2	Arie's (6) 237:24;257:22; 258:16;264:17,18,20	authorizing (1) 343:4
advice (23) 248:21;249:12,14,16; 250:14,19,24;251:8,15, 17,19,22,23,23;252:9; 253:11,18;254:5,9; 352:15;356:19;357:20, 22		and/or (3) 371:20;418:2;435:9	around (3) 261:25,25;401:12	available (3) 361:22;398:24;410:14
affairs (1)		answered (25) 235:4,11;238:10; 242:7;248:13;252:12; 263:22;270:6,25; 271:11;283:8;287:2; 288:5;318:11;321:3; 329:3;338:22;344:3; 356:21;360:22;361:16; 362:6;370:5;385:2; 390:12	ascertain (3) 305:3,8,11	award (1) 386:15
		anticipated (1)	asserts (2) 416:23;417:24	awarded (2) 387:25;388:3
			assets (14) 267:16;268:4,9,12,14, 17,20;269:10,15,17; 271:8;277:23;279:7; 337:22	aware (10) 243:23;266:23; 268:10;304:11,24,25; 350:11;354:25;355:5; 363:20
			assistant (4) 232:21;233:4;420:19, 20	away (2) 250:16;259:24
			Associates (4) 288:17;309:16;326:8; 369:14	
			assume (5) 276:14,15;310:14; 311:8;375:2	B
				back (29) 241:14;251:25;255:7; 258:7;302:18;304:16;

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

305:18;309:2;321:19; 331:14;335:16;344:6; 25;351:14;373:4;377:6; 378:8,21;381:20;382:5; 384:22;387:8;388:25; 389:3;398:8;409:13; 429:7;430:3,6 bad (1) 347:8 badgering (1) 286:20 bank (9) 245:20,24;246:3; 395:7,9,11,12;402:4,11 base (2) 301:10;313:6 based (12) 231:22;334:6;336:3,5, 6;350:25;354:23; 356:18;357:20,22; 373:8;428:15 bases (1) 336:13 basis (21) 238:20;277:9,11,13; 290:3;323:9;336:8,11, 20;346:9,11,23;347:17, 24;366:19;367:11; 368:23;419:25,25;420:2, 2 Bates (5) 294:19,23;370:16; 405:20;406:11 Batzad (1) 395:2 B-a-t-z-a-d (1) 395:4 became (3) 302:4;323:18;324:3 become (3) 373:4;374:24;396:23 began (2) 266:24;316:2 beginning (6) 249:4;361:23;380:3; 387:25;397:25;430:19 behalf (32) 266:24;271:19,20,25; 272:2;292:22;293:25; 294:6,14;296:4;298:5; 316:12,12,16;339:11; 340:3,21;342:25;343:2, 17;358:25;361:7,7,12; 366:4,4,24;367:16; 368:19,20;422:9;425:17 behave (1) 301:25 belief (5) 258:20;301:10; 330:23;332:3;424:9 believes (1) 238:19 belonged (2)	354:23;355:11 beneficial (1) 365:8 beneficiaries (2) 417:19,20 beneficiary (17) 340:22;359:2;367:21; 416:14,16,17,21;417:8, 8,10,14,16,17,21,21,22; 418:8 benefit (8) 256:18;264:24;347:6; 367:12,18;368:2;417:5; 423:20 benefited (2) 265:5;368:13 benefiting (3) 350:22,24;351:3 benefits (3) 428:8;429:22;430:13 berating (1) 302:3 best (7) 288:11;289:17; 296:17;297:15;323:24; 324:10;414:23 better (4) 273:3;308:13;335:21; 352:18 bid (2) 246:2;257:14 bigger (2) 356:14,14 bill (1) 364:12 billed (2) 365:6,9 billionaire (1) 266:4 bills (1) 359:23 bit (1) 262:9 board (5) 381:19,22,23,25;382:3 Bob (10) 231:2;232:21;249:10; 287:6;322:8;340:7; 365:24;406:3;412:8; 420:19 Bob's (2) 411:12;420:19 born (1) 323:17 both (10) 307:2;316:12;361:11, 25;366:5;377:14,17,24; 379:9;412:15 bottom (1) 295:2 bought (5) 256:25;259:8;333:18, 18;401:9	brainwashed (9) 237:12,22;238:3,3,12, 13,21;239:3;262:16 branch (2) 395:16,17 break (19) 262:13,19,22;266:14, 19;304:4;324:13; 359:13;386:11,20,22; 387:5;404:12,14,17; 405:7;406:13;434:3,5 Briefly (1) 231:15 bring (10) 249:24;310:11,13; 340:2;343:19;345:24; 352:21;363:24;366:20; 424:5 bringing (12) 311:5;341:5;343:8; 345:25;353:17,22; 359:6;365:5,12,16,22; 366:24 brings (1) 424:4 broad (1) 277:4 brought (12) 342:25;343:16; 348:24;349:12;353:18; 358:24;361:6;363:21; 364:3;423:7,12;425:11 bunch (2) 407:14,15 business (2) 313:16;333:9 buy (5) 242:17;256:20;257:7; 258:25;259:7 buying (3) 256:19;258:21;260:22	297:4;303:5,6,12,15,16; 322:18;355:24;359:24; 384:9;410:7,7,10 can (63) 234:6;236:14;241:13; 249:15;250:9;253:21; 254:13;255:10;262:13, 18,21;266:14;267:20; 273:16;276:11;280:17; 282:7;288:24;297:15, 24;301:23;302:3,15; 305:6,12,17;307:17; 309:2;316:23;318:18; 319:16;321:18,21; 324:13;331:13;333:23; 335:15;336:14;338:25; 344:25;347:13;350:7; 351:13;359:9,13; 361:22;363:13;368:11; 370:21;372:21;375:18; 386:20;387:4;398:5,6; 399:12;406:3;416:10; 421:14;430:2,3,6;432:14 candidly (1) 237:23 capacities (1) 366:5 capacity (4) 247:11;309:20; 343:13;414:20 captioned (1) 435:6 care (1) 268:12 carefully (3) 307:23;339:24;355:4 case (27) 249:24;272:10,17,22; 291:16;294:8;300:21; 303:20,25;316:25; 317:3;323:12;341:8,10; 351:9,24;352:2,21; 355:7,19;359:21;361:11, 25;383:4;402:16,20; 403:15 cc-ing (1) 314:25 CEO (1) 288:17 certain (9) 237:15;238:18;239:9, 10,13;284:25;327:12; 332:8;412:12 certainly (2) 248:3;316:23 certificates (4) 384:18;391:3,20; 392:9 certify (1) 435:3 cetera (3) 340:23;413:19,19 challenging (1)	351:23 chance (2) 341:17;356:13 chancery (11) 339:10;348:25;349:4, 13,15,19;351:7;352:4; 354:21;355:10;358:4 chances (1) 356:14 change (4) 281:20;285:7;321:6; 390:10 changed (2) 299:2;380:14 changes (8) 298:16;299:8,16; 409:2,16,18;435:9,11 changing (3) 253:2,4;324:12 character (1) 256:8 characterize (1) 373:17 charge (1) 410:4 charged (6) 289:8,10;336:23; 337:2,3;367:14 charges (2) 365:4,6 check (8) 301:22;313:11; 353:19;382:25,25; 388:25;389:3,5 checks (19) 389:6,7,9;392:11,13; 393:2,7,8,8,10,11,13,17, 17,18,19,20;394:13,14 child (2) 297:17;298:2 children (1) 377:18 choice (1) 351:25 choose (2) 352:3;356:18 chose (2) 268:18;378:2 circulating (1) 410:5 circumstances (5) 282:24;283:13,15; 285:4;323:17 Citibank (2) 395:13,14 claim (8) 341:11;347:3,17; 348:20;365:7;416:23, 25;417:24 claimed (1) 348:4 claims (7) 272:17;275:5;316:8,
C				
		calculate (3) 379:5,6;384:17 call (8) 237:11;265:25;266:2, 10;269:24;270:4; 275:18;373:16 called (6) 230:4;266:3;270:22; 292:12;373:5;420:9 calling (2) 269:16;276:23 Calls (7) 244:12;248:23;266:7; 286:12;291:13,15; 383:19 calm (2) 252:22,24 came (16) 290:22;296:22,25;		

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

17;415:3;417:24;428:21 clean (1) 338:3 clear (11) 260:11;328:13,15; 351:2,5;362:8;399:20; 400:18;402:10;409:15; 413:24 client (1) 366:11 close (4) 384:16;385:4;386:2,4 closed (1) 257:19 co-defendants (1) 368:25 co-defendant's (1) 369:2 collect (3) 319:9;324:8;363:13 collection (2) 323:7,19 colluded (2) 272:19,20 comfortable (1) 264:21 coming (1) 395:7 commencing (1) 434:12 comment (1) 409:9 comments (1) 410:6 Commission (1) 435:25 committed (1) 272:19 common (1) 372:4 communicate (1) 243:9 communicated (1) 241:4 communications (2) 249:23;340:23 company (14) 241:7;367:7;373:4,5; 375:4,22;377:3,7;384:9; 385:15;393:9;394:21, 22;404:25 compete (1) 242:17 complained (1) 348:3 complaining (2) 426:4,5 complaint (24) 330:4,9;339:4,14,19, 24;341:16,24;342:24; 343:5,9;350:25;351:19; 353:3,14,15;358:18,19; 359:6;361:3;369:11,13,	18,25 completely (4) 307:24;432:23; 433:11,24 compound (4) 302:24;303:8;356:20; 383:18 comprise (1) 328:17 con (1) 329:23 concentrate (2) 322:2;399:13 concern (2) 313:21;372:22 concerned (15) 267:16,24;268:2,3,5,8, 14,16;269:10,14,23; 270:12,14,19;422:12 concerning (1) 270:16 concluded (1) 253:21 conclusion (4) 244:13;248:24; 256:13;291:15 conduct (1) 333:6 conflict (4) 267:5,10,11,14 confuse (2) 357:12;415:6 confused (13) 306:2,3;357:7;397:19; 431:22,24;432:8,23; 433:11,20,25,25;434:4 confuses (1) 357:11 confusing (1) 372:10 connection (5) 269:2,8;370:15;378:9; 379:25 consent (1) 288:15 Consequences (7) 260:24;261:9,18; 263:10;264:9,12;265:13 consider (1) 248:2 consideration (6) 371:25;425:16,22; 426:17,18;430:24 considered (3) 257:13;339:20;345:2 consistent (1) 253:5 construe (1) 316:20 consult (5) 250:24;365:11,14,16; 397:6 consulted (1)	253:17 contemplating (1) 318:18 contents (1) 330:10 Contingent (1) 417:20 continue (7) 256:2;403:20,20; 419:11,24;427:17; 434:10 continues (3) 416:24;417:23;418:8 control (1) 245:18 controlled (1) 396:14 convenience (1) 263:23 conversations (2) 359:4,5 conveyed (1) 243:7 convince (2) 311:13;312:3 convinced (1) 237:16 cooperation (1) 410:11 copies (1) 392:25 copy (14) 231:4;290:8;302:17; 325:24;339:13;391:4,5, 6,8,10;392:4;393:6; 406:20;408:11 corrected (2) 283:21;362:7 correcting (2) 284:6;311:21 correction (2) 284:13;288:24 corrections (1) 435:9 correctly (2) 301:12;379:5 cost (2) 418:16;420:4 costs (3) 252:15,16;420:8 co-trustee (2) 337:24;338:6 counsel (13) 232:18;248:21; 249:13;250:15,19; 251:8;295:13,14;297:4; 299:24;300:3;302:4; 369:2 count (2) 396:24;423:19 counterclaim (2) 323:3,8 counterpart (2)	406:20,23 countless (1) 375:7 country (2) 266:7;419:3 course (2) 278:21;346:6 court (36) 230:25;234:16; 249:24;252:19;264:2; 279:20;291:2,11; 339:10;342:22;344:22; 348:25;349:4,13,15,16, 17,18,20,20;350:12,13; 351:7,23;352:4,18; 354:21;355:9,10;358:4, 8;367:7;377:21;378:9; 407:25;430:6 courtesy (1) 269:15 courts (3) 341:7;346:5;354:24 court's (1) 378:10 covered (4) 248:25;249:3;253:25; 360:9 CPLR (1) 359:9 create (1) 402:21 created (1) 323:17 crossed (2) 241:22;243:4 curious (1) 337:20 current (2) 342:15;413:18 customary (1) 418:24 cutting (1) 258:18	244:25;247:19,22; 249:2;266:17;279:23; 286:24,24;292:7; 297:19;298:22;311:22; 314:21,25;326:4;327:9; 339:3;340:24;341:15; 357:8;368:19;369:10; 370:9,23,25;371:2; 376:16,16,19;386:16; 396:11;399:5;404:8; 405:6,15;413:14;414:11, 12,21;435:3,17 date (32) 279:11;307:5;341:21, 23;342:15;353:23; 354:2;371:22;374:16, 19;386:9;398:5,6,9; 400:7;401:4,6,11,15,17, 22;422:19,22;424:13,14, 17,20,21,24;431:16,25; 433:17 dated (10) 274:14;279:24;292:8, 15;314:21;315:2; 370:10,14;386:15; 388:18 daughter (5) 270:4;275:18;276:23; 337:24;338:7 daughter's (1) 337:21 David (3) 235:16;314:25;327:13 day (21) 231:7;232:25;237:9; 247:18;265:23;266:6; 311:10;395:20;410:24; 415:7;421:7,7,7;423:6, 10,17;424:12;432:16; 434:13;435:13,21 days (12) 311:13;312:2,6,11,13, 22;313:4,25;314:15,19; 315:13;317:4 dealing (1) 260:10 debt (1) 429:14 December (13) 231:7;370:14;372:3; 374:2,5,7,11,15,21; 387:12;388:18;398:3; 401:22 decide (1) 250:23 decided (8) 239:21;246:20;247:4, 6;366:7;368:15;374:14; 410:23 deciding (1) 257:14 decision (15) 239:19;240:6;251:3;
				D
				D&K (58) 273:19,20;274:14; 280:19;281:11,18; 286:4;288:13;291:3; 292:14;293:17;304:9; 316:8,12,16,17;317:17; 318:9;320:3;323:2,6,8, 19,22;326:7,9;391:18; 396:13,19;397:16,23; 398:4;399:18,19,23; 400:12;402:16;414:16; 416:24,25;417:3,24; 418:2;431:9,13,13,17, 19;432:5,8,13,18;433:2, 6,7,14,19,21 DALIA (44) 230:3;234:7;240:2;

ORLY GENDER VS.
DALIA GENDER

Pg 82 of 150

DALIA GENDER
February 7, 2013

260:7;341:7;345:24; 349:7;351:22;352:22; 25:354:14;357:18; 358:4,12;377:21 declarative (1) 266:12 deeply (1) 267:15 default (5) 274:14;330:23; 331:11,21;332:3 defendant (1) 418:18 defendants (1) 418:21 defined (1) 431:20 Delaware (49) 339:4,11;340:3,24; 341:5,7;343:18,20; 345:7,25;346:10,24; 347:2,17;348:24;349:4; 13,14,19,21;350:12,13; 351:7;352:2,3,22;353:2; 3;354:20,24;355:7,9,14; 356:9,16,18,23;357:18; 24;358:8,20;359:6,18; 20;360:4,7;362:20; 423:7,13 Dellaportas (2) 421:17,24 Dellaportas' (1) 403:18 demonstrated (1) 317:5 denies (1) 317:17 deny (4) 316:9,18;330:20,21 denying (1) 317:19 deponent (1) 434:20 deposed (1) 231:11 deposition (26) 230:11,16;231:6,7; 232:18;237:9;247:14; 248:2;249:4,6;253:15; 272:7;308:3;311:10; 316:3;317:12;322:17; 21;324:15;329:20; 340:25;360:10;386:17; 434:11,17;435:5 depositions (1) 317:5 description (1) 403:11 desires (1) 243:7 desk (2) 322:12,13 details (1)	343:12 determination (6) 336:20;352:6,21; 354:22;355:10;378:10 determine (13) 298:15;318:6,8; 319:22;331:11;333:2; 12;335:4,9,23;337:8,14; 346:5 determined (7) 348:25;349:5,23; 350:14;352:4;357:23; 384:7 determining (1) 332:20 DG (9) 294:19;295:3,5; 370:17;405:21;406:11; 413:5;415:24;430:23 dialogue (1) 253:19 difference (1) 376:2 different (4) 271:23;308:11,12; 373:3 difficult (1) 416:12 directing (1) 325:4 direction (1) 279:6 directly (2) 293:5,9 director (4) 381:11;382:17,18,22 directors (1) 413:18 disappointing (1) 262:7 disclaimed (1) 425:17 discovery (1) 327:6 discuss (13) 261:6;277:16,18; 338:17,19;340:5,7,8,9; 11;366:16;370:19; 408:23 discussed (10) 259:5;299:10;308:2; 311:9,12;340:14,15; 347:4;368:23;411:8 discussing (1) 277:22 discussion (2) 354:18;364:8 discussions (5) 368:25;410:22;411:2; 6;412:5 dishonest (2) 256:12;258:18 dishonesty (2)	256:15;258:21 disjunctive (2) 302:24;303:8 dismiss (1) 271:16 dismissed (1) 272:17 disposed (1) 426:9 district (1) 363:22 divorce (5) 384:16;385:5;386:3,4, 6 divorced (1) 398:2 divorcing (1) 388:2 DJ (1) 359:18 document (76) 234:23;236:15,18,23, 25;271:19,23;273:12,21; 274:10;280:10;283:3; 284:3;290:19,21;292:12, 22;294:6,14,18,20; 295:5,25;296:6,15; 297:5;302:13,17,20; 305:4,9;308:10;309:10, 15;315:17;316:2,20; 322:22;323:13,15;325:7, 13,15;326:14,16,20; 327:2,9;328:2;329:25; 330:2;331:6;342:21; 385:20;389:17;390:9, 16;391:20,21,24;399:5, 16;405:19,19,23;406:10; 408:22;413:8;415:7; 416:7;420:22;424:23; 427:3,20;431:6;432:25 documentation (1) 392:16 documents (42) 233:5,6,8,10,14,17,19, 20,25;300:21;301:8; 303:20,25;319:4,9,13, 21;320:4,8,15,25;321:9, 16;323:23;324:8; 327:13,15,19,20;328:16; 329:9;332:21;343:14; 372:8,19;373:8,18; 379:23;380:9;383:8; 406:9;410:17 done (6) 246:12;248:6;292:6; 334:19;335:2;385:10 doubts (2) 335:25;336:2 down (7) 234:16;252:22,24; 280:24,25;369:4;426:2 draft (10) 234:22,25;235:6,14;	282:12,15,17;383:9,11; 409:6 drafted (13) 235:13;282:9,15; 297:5;383:8,11,16,17, 23,24,25;408:17,22 drafting (4) 408:15;409:21;410:4; 421:11 drafts (8) 407:19,22;408:4,8,9, 11,24;410:14 Duane (1) 411:14 due (1) 346:6 duly (3) 230:1,5;345:2 during (4) 279:16;281:22; 386:18,19 E E&G (6) 394:14,15,16,17,19,25 eager (1) 265:22 casier (1) 370:21 easiest (2) 323:12;370:24 easy (3) 384:17;385:5,7 economic (3) 427:9;428:8;429:22 effect (4) 296:14;298:11; 343:18;398:18 effort (1) 296:13 efforts (2) 311:10;323:7 eight (1) 404:23 Either (8) 257:7;287:23;333:13; 356:16;362:21;416:23; 417:23;433:25 Electronic (2) 407:21;410:14 eligible (1) 375:5 else (26) 285:23;306:14; 334:20,24;340:11,14; 353:8,10,16,16;354:11; 390:3,5;394:8;400:9,17; 406:8;417:10,15;426:22, 24;427:2;428:25; 429:23,24;430:16 else's (3) 285:8,12;353:15	emotions (1) 375:11 end (10) 239:5;260:20;284:9, 20,21,23;288:12;342:4, 5;415:7 ended (1) 386:8 enforce (6) 312:15;313:7,24; 314:11,11,12 enforceability (12) 316:9,18;317:18,20; 319:5,10,14,21;320:5,9; 323:24;324:9 enforcement (2) 313:12;325:5 enforcing (2) 312:21;313:3 enjoy (1) 375:4 enough (3) 243:18;420:21;428:10 Enriquez (1) 374:20 enter (1) 403:7 entered (1) 304:11 entering (1) 403:2 entertain (1) 245:13 entire (1) 435:4 entity's (1) 393:13 enumerated (1) 415:25 envelope (1) 302:6 equally (4) 377:14,18,25;397:5 ERRATA (1) 435:10 escrow (2) 366:8;367:7 Especially (1) 363:17 establish (1) 392:21 estimate (2) 384:8,11 et (4) 340:23;369:14; 413:19,19 even (10) 235:20;237:23; 275:18;276:23;277:3; 285:17;300:11;337:10; 366:2;367:5 event (2) 251:7;318:20
--	--	--	---	--

ORLY GENDER VS.
DALIA GENDER

Pg 83 of 150

DALIA GENDER
February 7, 2013

events (1) 358:22 everybody (1) 420:7 everyone (1) 419:9 evidence (5) 268:24;269:19; 332:24;338:2;347:20 evidenced (1) 379:22 evidencing (1) 402:5 exact (1) 284:6 exactly (10) 231:19;267:10;333:3; 343:11;352:17;389:15, 16;424:13,16,24 EXAMINATION (1) 230:8 examined (1) 230:6 example (6) 238:21;239:9;270:18; 319:12,25;342:17 except (4) 281:4;400:11;417:10; 435:8 exchange (5) 379:3,10;380:19; 382:5;392:22 exclusively (2) 352:23;353:4 Excuse (11) 260:14;265:16; 275:10;277:17;286:24; 347:12;350:3;362:5; 378:5;382:2;404:8 executed (1) 422:20 exercise (1) 398:23 Exhibit (78) 234:7,23;235:24,25; 236:19,21;237:4,5; 266:16,17;271:14,15; 279:23;280:6,18,18; 281:8;283:7;284:22; 285:12;292:7,11; 294:15;298:2,18,25; 299:9,16;302:14,20; 304:10;305:13;307:21; 312:18,19;314:21,24; 325:5;326:3,4,6,21; 327:8,9,12,16;328:6,17, 20,22;329:20;330:3; 339:3;341:15,24;361:3; 369:9,10,12;370:9,14; 372:9,20,25;373:18; 376:5,6;378:14;379:23; 380:9;385:21;386:16; 399:4,5;405:14,15;	407:3;415:22 exhibits (5) 231:5;232:11,13; 294:23;339:17 ex-husband (4) 256:6,7,10;258:10 existing (1) 416:24 Expires (1) 435:25 explain (3) 367:22;368:11;419:19 explained (1) 336:18 explaining (1) 375:9 explore (1) 257:6 explored (1) 318:16 express (1) 375:11 extenso (1) 253:25 extent (7) 233:13,20;364:16; 368:18;392:3,25;410:14 <hr/> F <hr/> fact (14) 245:24;262:5;267:15; 268:20,24;269:19; 301:22;332:24;336:6,9; 338:2;351:11;354:23; 378:7 fair (2) 337:15;384:12 faith (1) 264:14 familiar (11) 322:14;323:14;327:3; 328:10;341:8,10;400:16, 19,20,23;405:24 familiarize (1) 280:4 family (2) 241:7;353:11 Fang (4) 267:6,14,23;400:13 Fang's (1) 287:15 far (5) 283:6;313:9;315:19; 407:9;429:9 fast (1) 323:4 father (2) 255:16;348:11 favor (1) 427:9 February (6) 324:7;401:19,24;	434:12,18;435:5 feel (1) 264:21 fees (9) 415:18,20;416:2; 417:2;418:2;419:23; 420:13;422:8;426:20 few (1) 405:3 fight (2) 242:16;355:25 fighting (1) 356:2 fight (1) 422:14 figure (1) 385:17 file (3) 302:14;303:14;359:9 filed (11) 339:10,19;349:20; 350:11;354:8;355:7; 358:19,19;359:18; 369:19;370:2 files (20) 291:9;299:21,22,23; 300:23;301:4,15;302:5, 8,21,22;303:5,6,13,17, 23;325:23;326:21,24; 327:4 filing (4) 351:25;352:2;353:23; 354:2 final (2) 351:8;386:15 finances (2) 258:11;361:21 financial (4) 258:13;259:25;260:2; 359:24 Financially (1) 361:19 financing (4) 245:8,11,16;246:4 find (12) 245:8;249:12;250:3,8; 264:23;270:15;284:5; 306:9,22;307:18; 318:19;429:9 fine (4) 281:6;337:12;344:18; 425:3 finish (8) 244:25;275:10; 314:10;403:5,14;404:19, 20;420:24 finished (1) 430:5 finishes (2) 230:23;241:10 firm (5) 302:5;308:18;364:4; 409:20;410:6	first (27) 237:8;249:4,5;253:15; 258:3;271:22;272:18; 273:10;284:10;291:14; 308:23;315:16;322:6, 23;340:25;343:21; 344:14;360:10;362:7; 364:20,20;407:16,20; 415:22;419:13;424:11; 432:10 fit (1) 429:20 five (2) 300:11;322:4 five-minute (2) 386:11;405:7 fixed (2) 299:2;380:14 fixes (1) 299:8 focus (1) 370:21 follow (4) 242:23;331:20; 348:11;366:13 followed (2) 334:7,13 follows (2) 230:6;263:3 foreclose (1) 266:25 foreclosing (2) 269:17;271:8 foreclosure (10) 330:24;333:12,13,14; 334:3;335:4,9,14,24; 337:15 form (23) 267:17;269:5,19; 291:14;299:11;302:23; 303:7;313:17;316:24; 328:19;330:22;332:2; 344:3,15,18;347:11,13, 21;349:6;352:8;357:5; 398:21;409:24 formal (1) 359:10 forth (2) 278:10;289:19 forward (1) 264:23 found (3) 305:15;307:6;351:9 foundation (1) 249:11 four (1) 434:13 frankly (1) 255:22 fraud (4) 272:10,11,12,19 fraudulent (2) 278:9,24	fresh (6) 247:25;249:9;350:7; 351:23;363:17;405:10 friends (1) 246:6 front (1) 354:24 frustrated (1) 404:19 fulfilled (1) 334:10 full (2) 358:2,7 fully (2) 413:17;414:4 further (3) 230:6;271:16;272:6 future (1) 261:9 <hr/> G <hr/> game (1) 314:6 gave (15) 290:20;301:5;372:7; 380:25;382:21;390:18; 391:12,19,24;392:17,18; 426:10;427:25;429:25; 430:21 general (4) 250:24;281:13; 288:15;407:11 generally (1) 251:2 generous (1) 428:10 GENGER (382) 230:3,10,13;231:1,4; 232:1;233:1,14;234:1,6, 7,22,22;235:1;236:1,23, 25;237:1,5,7,20;238:1, 21;239:1,19;240:1,23; 241:1,9;242:1,243:1,2; 244:1;245:1;246:1,9; 247:1,11;248:1,9;249:1; 250:1,14,18;251:1; 252:1,22;253:1,8;254:1; 255:1;256:1,10,24; 257:1,14,22,23;258:1; 259:1,14,18,20;260:1; 261:1,13,19;262:1; 263:1,4,11;264:1;265:1, 14;266:1,24;267:1; 268:1;269:1;270:1; 271:1,18,20,25;272:1,3, 9,19,20;273:1;274:1,13; 275:1;276:1,16;277:1, 19;278:1,13,15,20,23; 279:1;280:1,2,17;281:1, 17,19;282:1,9,12;283:1; 284:1;285:1;286:1; 287:1,10;288:1,2,10,11,
---	---	--	---	--

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

16,17;289:1,5,18;290:1, 18,20;291:1,292:1,11; 293:1,14;294:1,2,295:1, 8,17,22,24;296:1,5,18; 297:1,7,13;298:1,6,18; 299:1,300:1,16;301:1; 302:1,303:1,304:1,8,13; 305:1,12,14,23;306:1, 16,19,21;307:1,308:1, 25;309:1,310:1,3,311:1; 312:1,3,24,24;313:1,4, 13;314:1,25,25;315:1,4; 316:1,15;317:1,318:1, 21,23;319:1,4,20;320:1, 13,24;321:1,24;322:1; 323:1,324:1,325:1,4; 326:1,13;327:1,18; 328:1,329:1,16,19; 330:1,331:1,8;332:1; 333:1,334:1,335:1; 336:1,337:1,19;338:1; 339:1,7;340:1,20;341:1, 5,8,20;342:1,17,24; 343:1,2,3,15;344:1,24; 345:1,346:1,4,9;347:1; 348:1,349:1,10;350:1; 351:1,9;352:1,353:1,11; 354:1,355:1,356:1; 357:1,358:1,359:1,17, 19;360:1,361:1,362:1; 363:1,364:1,365:1,12; 366:1,367:1,368:1,19, 20;369:1,17,24;370:1, 18;371:1,15;372:1,22; 373:1,374:1,375:1; 376:1,15,16,20;377:1; 378:1,379:1,380:1; 381:1,382:1,16;383:1; 384:1,385:1,386:1; 387:1,10;388:1,19; 389:1,390:1,391:1; 392:1,4;393:1,394:1; 395:1,396:1,11;397:1; 398:1,399:1,400:1,3; 401:1,402:1,15,16,20; 403:1,404:1,13;405:1, 18,22;406:1,407:1; 408:1,14;409:1,410:1; 411:1,412:1,413:1,14; 414:1,21,415:1,416:1; 417:1,4,13,14;418:1; 419:1,420:1,421:1; 422:1,423:1,424:1; 425:1,426:1,19;427:1, 10,15,22;428:1,2,3; 429:1,13;430:1,431:1; 432:1,12,18,25;433:1, 19;434:1,17;435:3,17 Genger's (6) 260:15;287:16; 293:21;340:25;402:12; 434:11 given (6)	251:16;269:24; 282:22;290:23;351:25; 432:9 gives (1) 390:2 giving (12) 252:17;294:5;377:2; 382:7;427:22;428:4,6, 14,19,25;429:12;433:6 glad (1) 364:3 goes (4) 253:24;287:6;395:24; 396:9 gold (1) 392:14 good (13) 264:14;278:11; 338:20;347:8;352:19; 366:20,22;367:17; 415:17;422:7,13; 426:21;427:10 GP (1) 293:18 GRIVER (308) 230:9;231:3;233:13, 18,23;234:5,21;235:7, 15;240:7;241:10,13,19; 242:10;244:16;245:6, 23;246:19,25;248:3,8, 16;249:10,16,20,22; 250:5,7,8,13;251:13,25; 252:5,8,21;253:7,16; 254:2,19,25;255:5,25; 257:21,25;258:7;259:9; 260:18;261:12;262:3,15, 18,20;263:17;264:2,10; 265:9,19;266:15,22; 267:18,21;269:12;270:2, 10;271:2,12;272:8,12, 23,25;273:9;274:3; 276:2;278:17,19;279:19, 21,25;281:4,7;282:8; 283:4,12;286:15,19; 287:5,9,21;288:9;289:2, 25;291:19;292:9;293:8; 294:22;295:7,15,16,21; 296:22,25;297:6,25; 298:24;299:6,15; 300:13;301:23;302:12, 19;303:4,11;304:3,7; 305:2,21;307:16;309:11, 24;310:18;311:25; 313:22;314:4,7,23; 315:3,8;316:23,25; 317:3,9,14;318:4,12,14; 320:23;321:8,14,19,23; 324:14;325:2,3,22; 326:2,6,12,24;327:7,11, 24;328:21,24;329:4,7; 330:16;331:14,23; 333:5;335:19;338:3,5, 10,13,25;339:6;340:18; 341:3,13,19;342:23; 343:23;344:6,16,21,23; 345:8,22;346:3,19,22; 347:15,25;348:15; 349:8;350:3,4,9,10,19; 351:17;352:11;356:24; 357:14;358:10,25; 359:11,16;360:14,23; 361:24;365:9,13,15,23; 363:19;364:16,22;365:2, 10;368:17;369:8,12,16, 23;370:7,12;371:7,11, 18;372:6;374:10; 375:13;376:22;379:17, 21;381:13;382:15; 383:24;385:9,24;386:12, 14,21,23;387:4,8,9; 388:16;390:17,25; 391:16;392:3,7,12; 394:17,20;395:19,22; 396:8,22;397:14;398:11, 17;399:2,7,14;400:2,21; 401:3;402:3,7,9,14,25; 403:22;404:12,16,23; 405:3,8,14,17;406:4,22; 407:4,7,13,18,24;408:2, 6,13;409:13,14,23,25; 410:13,19,21;411:25; 412:23;414:3,7,15; 415:2,13;418:25; 422:25;424:8,18;425:9; 426:7,13;430:12;434:3, 5,9 Group (9) 270:17;277:25;278:2; 304:12;306:13,18; 307:4;353:13;401:10 grunt (1) 339:2 guess (7) 284:14;288:8;300:15; 360:5;374:9;376:25; 400:12 guy (2) 260:6,8 H Half (3) 421:7;429:17;434:12 hand (4) 262:6;408:15;409:20, 22 hang (2) 286:10,11 happen (5) 257:12,13;260:8; 314:18;332:8 happened (16) 240:21;242:2;257:3; 259:15;268:12;295:18; 300:11;314:17;334:3; 358:3,21;372:12; 377:17;381:15;401:24; 424:15 happening (1) 307:2 happens (1) 425:2 happy (2) 305:24;306:5 harass (1) 364:25 harassing (4) 252:20;297:9,12; 314:9 hard (4) 305:19;309:18; 399:13;416:9 hardly (1) 365:25 harm (3) 257:23;258:25;275:21 harm (1) 259:20 hear (1) 268:5 heart (1) 395:25 help (3) 355:18;359:24;375:11 helpful (2) 253:2,3 hereby (4) 413:16;414:4;433:2; 435:3 herein (1) 230:4 hereof (2) 435:7,10 Here's (1) 372:22 herself (3) 347:4,5;355:21 higher (1) 259:8 history (1) 397:25 holder (1) 346:6 home (1) 381:5 honest (1) 301:11 honestly (1) 301:25 honesty (2) 260:15;338:20 honor (1) 375:6 honored (1) 314:19 hope (1) 404:7 hoping (3) 312:4;355:18;403:5 hours (2) 233:3;434:13 husband (3) 256:3,4;385:7 hypothetical (7) 256:22;257:9,10; 286:13,14;287:3;309:21 Hypothetically (1) 256:21 I idea (58) 236:24;244:23;245:4; 270:20;285:8,9,12,13, 14,16,18,19,21;286:4,17, 18;287:11,12,14,15,16, 17;291:23;317:21; 322:25;340:2,4,6,15; 341:4;348:21,21,22; 355:24;363:12,24; 365:18;367:13;368:14; 402:15,17;403:6,11,12, 12,12,13,16,18,19;404:4, 6;410:25;420:12,14; 422:8,13;425:13 ideas (1) 410:8 identified (1) 280:9 identify (4) 232:3,8;238:24; 327:20 ignore (2) 317:11,16 imagine (1) 382:12 immediately (2) 382:18,21 impact (1) 276:5 important (4) 243:18;377:16,20; 416:6 improper (8) 330:24;333:13;335:5, 7,10,14;337:18;357:13 improperly (4) 330:23;331:12;332:3; 348:12 Inc (4) 288:17;309:16;326:8; 369:14 incentive (1) 404:11 included (2) 320:2;327:14 includes (2) 282:13;301:3 Including (8) 247:9;280:23;295:13; 351:10;368:24;371:21; 413:7,18
---	---

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

incorrect (1) 424:20	371:3	joking (3) 278:18,20,21	399:7	370:9,14,15;379:24,25; 380:12;387:14;388:18
indicate (1) 291:9	interrogatory (5) 371:4,10,14,16;372:7	judge (6) 274:19;277:11;287:4, 6;387:25;388:3	lasted (1) 279:13	letting (4) 269:16;276:24;277:3; 377:6
indicated (2) 266:11;435:9	interrupt (1) 247:23	judgment (2) 351:8;367:17	late (1) 355:3	liability (1) 412:21
Indicating (1) 287:19	interruption (1) 409:12	Justice (3) 277:2,16,21	later (3) 343:20;366:16;380:14	liable (3) 417:2,25;418:15
individual (6) 366:25;368:3,4,6,8; 415:16	intervene (1) 347:6	K	law (3) 344:22;409:20;410:6	life (1) 365:23
individually (5) 272:20;361:7,12,20; 362:2	into (11) 265:3;304:11;371:15; 395:10,18,24;396:9; 402:12;403:2,7;426:16		lawsuit (8) 340:2;341:5;343:16; 353:17;423:12;424:3,4; 425:12	limit (1) 343:25
inflection (1) 266:11	investigate (2) 335:6;337:17	keep (2) 299:21;391:4	lawsuits (1) 423:11	limited (20) 281:10,11,18;290:9; 291:3;292:13,14;304:9; 312:21,23;320:3;326:7; 343:14;368:24;390:7,8; 400:12;431:9,13;433:14
inform (2) 240:16,20	investigated (1) 336:2	kept (2) 391:8,13	lawyer (62) 235:13,16,18,21,22; 236:3,13;239:8;247:10; 248:10,17;250:25; 252:19;253:17;276:17; 287:18;301:5,11;310:11, 13,15;311:5;316:5; 317:16;321:22;325:10, 12,15,18,21;337:17; 340:12,13;345:15;348:9, 22;351:5;352:10,23; 353:11;354:14;366:11; 367:19;383:10,11,12,16, 22,23,24,25;384:2,2; 408:19;409:20;410:2,6, 9;412:2,4;421:18,21	line (11) 237:11;239:17; 253:18,19;255:3,12,19; 269:20;284:10;293:20; 324:13
information (11) 330:22;331:10;332:2; 333:11;345:23;358:11; 359:3,4;378:2,5,8	investigating (2) 298:5;336:24	key (1) 405:8	lawyers (23) 236:14;239:8,12; 282:14;301:25;310:7,8; 329:15;368:15;408:19, 21;409:5,8,18;410:7; 412:3;420:22;421:19, 23;422:12;425:5; 426:21,23	lines (5) 255:2,6;263:3;264:6; 426:2
informing (1) 326:9	investigation (3) 333:7,8;335:3	kidding (1) 422:3	laying (1) 249:11	list (1) 369:3
initiate (1) 364:5	Investment (4) 288:16;309:16;326:8; 369:14	kids (1) 377:24	layperson (2) 323:12;415:8	Listen (6) 297:23;304:19; 305:22;355:4;362:21; 430:7
initiative (1) 366:15	Investments (2) 312:20;316:13	kind (14) 246:4;264:24;275:12; 302:10;366:6;377:2; 385:5,16;390:10;392:16, 18,21;403:4;410:11	Leah (4) 234:11;267:6,14,23	litigation (4) 271:24;295:9;333:21; 338:9
in-person (1) 411:2	Investors (1) 351:9	knew (15) 267:13;274:24;307:3; 323:19;331:18,18,20; 334:14;350:21,23; 351:12;366:6;367:2; 375:2,3	left (2) 272:16,22	little (3) 262:9;308:13;400:15
input (4) 353:8,10;354:16; 359:4	involve (1) 404:24	knowing (3) 268:15;277:4;381:14	legal (13) 235:14;242:21; 243:23,25;244:13; 248:24;291:15;331:19; 347:16,24;366:6;415:7; 426:20	lived (1) 260:9
installments (1) 388:5	involved (8) 255:23;256:11,24; 258:11,13;411:3,5; 418:12	knowledge (13) 234:24;298:25; 330:22;331:10;332:2; 333:11;354:4,7;365:15; 369:18,25;397:15; 400:10	LEINBACH (2) 358:18,22	LLC (1) 293:18
Instead (2) 302:3;403:10	involvement (2) 258:4;259:25	known (2) 307:10;378:14	less (4) 246:11,13;260:5; 270:19	LLP (1) 369:14
instructed (7) 274:15;277:6;286:2; 306:4;337:5,7,16	involving (3) 306:17,18;368:21	knows (3) 243:10;269:25;301:20	letter (12) 270:14,16;304:11,14;	long (8) 233:2;369:3;395:19; 410:22,24;416:8;421:2,5
instructing (1) 337:13	irrevocably (2) 413:17;414:4	Kortmansky (17) 287:22,23;300:7,8,14, 20,22;301:4,7,15;302:5; 303:19,23;325:23; 326:22,25;327:5		longer (4) 374:6,12;396:24; 404:21
instruction (1) 362:14	issue (3) 323:20;364:2;406:5	Kortmansky's (3) 302:21;303:6,17		look (43) 234:6;235:24;236:21; 237:4,7;271:13;273:2, 16;280:18;284:9,22; 295:2;298:18;305:12; 307:21;312:15,18,18; 316:7;327:3,19,22; 329:20;330:9,18;342:3; 370:23,25;371:4,10; 376:5,7;378:14;379:8; 387:11;406:15;413:2; 415:17;425:16;426:25; 428:7;430:20,25
interactions (1) 272:16	issued (5) 277:21;279:8;351:8; 382:7,10	L		
interest (27) 238:6,10,18;240:13, 23;264:15,17,18;289:17; 296:18;414:23;426:10; 427:9;431:9,13,14,17, 19;432:5,9,13,19;433:3, 6,7,19,21	issuing (1) 409:6			
interested (3) 241:6;243:5,12	J	laboring (1) 408:15		
interests (2) 288:11;329:16		language (3) 284:19,23;288:12		
interpleader (17) 363:21,25;364:7,13; 365:5,13,17,22,25; 366:2;367:6;368:12,22; 369:10,13;425:11,14	January (9) 279:13;324:4;379:2; 387:23;388:17,22,24; 389:5,13	last (10) 251:25;253:7;284:10, 12;321:21;329:22; 330:9;386:21;389:4;		
interrogatories (1)	jewelry (1) 392:14			
	job (1) 301:12			
	John (5) 420:19;421:16,16,17; 422:2			
	jokes (1) 278:14			

ORLY GINGER VS.
DALIA GINGER

DALIA GINGER
February 7, 2013

looked (5) 246:8;328:10;334:10; 407:3;431:2	5,20;327:10,15;339:5; 341:16;361:3;369:8,11; 370:7,11,13,19;371:2; 372:9,19,25;373:18; 379:23;399:6;405:16	230:23;232:17;233:4; 16,22,24;234:12,15; 235:3,10;239:24;240:2; 241:8;242:6;244:12,25; 245:21;246:16,22; 247:13,19,22;248:12,23; 249:8,15,18,21;250:2,6, 11;251:10;252:11; 253:14;254:22;255:4,7, 12,18;257:16,24;259:3; 260:17;261:11,21; 262:13,18;263:14; 264:7;265:8,16;266:8, 19;267:17;268:23; 269:4,18;270:5,24; 271:10,17,22;272:13,15; 273:6,25;275:5,22; 278:14;280:22;281:3, 25;282:5;283:6;286:12, 19,24;287:7,20;288:4, 20;289:21;291:13; 293:6;294:21;295:4,12, 19;296:19,24;297:3,19, 22;298:22;299:5,11; 300:6;301:8,9,12,14,16, 19;302:2,18,23;303:7; 304:16,19;305:17; 307:12;309:2,21; 310:16;311:18,22; 313:14,17;314:2,5; 315:6;316:19,24;317:7, 11,24;318:10;320:16,20; 321:2,11;322:16; 324:12;325:18,25; 326:11;327:2,13,23; 328:19,22,25;330:15; 332:23;335:16;337:25; 338:8,22,25;342:19; 343:21;344:11,19; 345:18,22;346:18; 347:11,19;348:7;349:6; 350:2,7,16;351:13; 352:8,14,16,24;353:6, 25;354:4;355:17; 356:20;357:4,8,12,20; 358:10,14;359:8;360:9, 12,21;361:16;362:5,10, 18;363:15,21;364:11,16, 19,24;365:4,11,16; 366:7,23;367:23,25; 368:6,12,17,19;369:6, 13,20;370:2,5;371:5,17; 374:7;375:10;376:17; 379:14;381:8;382:14; 383:18;385:2,21;386:10, 20;388:9,12;390:12,20, 24;391:9;392:10; 394:16;395:17,21;396:3, 16;397:8,12;398:8,20; 399:24;400:18;402:7, 24;403:21;404:8,21; 405:2,6,9,25;406:18,25; 407:5,9,16;408:6,10,23;	409:22,24;410:13; 411:20;412:15,22; 413:24;414:6,9,25; 415:4;418:18,20; 422:24;424:6;425:7,11; 426:5,11 Meister's (4) 303:23;322:13; 356:18;403:16 member (1) 353:11 memo (3) 314:21,24;315:5 memorandum (7) 315:20;316:11; 317:19;322:3,4;326:5,7 memorialized (1) 380:7 memorializing (3) 373:19;390:10;393:2 memory (2) 282:20;354:12 mention (1) 237:24 mentioned (1) 342:14 midnight (1) 404:10 might (25) 233:12;238:17,22; 239:8;241:6;243:5; 245:8;251:12;256:15; 257:13;265:14;284:25; 285:23,23;319:5;320:4, 8;332:14;337:3;340:7; 360:5;364:4;383:22; 384:20;404:14 million (13) 246:12;261:8;372:5; 373:21;375:17;379:11; 382:5;384:7;385:17,23; 429:14,15,17 millionaire (1) 266:4 millionaires (1) 266:7 mind (3) 241:22;243:4;264:16 mine (1) 285:23 minute (9) 247:15,15,16;249:2; 250:12;262:14,19; 344:12;424:6 minutes (3) 263:21;300:12;322:5 misanswered (1) 232:4 Mischaracterization (1) 288:21 mischaracterize (2) 257:20;414:10 mischaracterizes (6)	240:4;275:23;314:3; 344:20;347:20;349:7 mischaracterizing (2) 272:2;316:21 misrepresenting (1) 415:7 missed (1) 430:8 misspoke (1) 267:18 mistake (1) 366:14 mistakes (1) 231:16 mixing (1) 401:12 moment (6) 277:15;345:14,16; 412:11,12;429:25 Mommy (1) 243:12 Monday (2) 434:11,18 monetary (1) 433:18 money (24) 246:9;252:15,16; 258:22,24;259:18; 261:19;263:12;265:4,6, 15;363:13,14;366:17; 387:20;389:21,21,23; 390:2,6;392:11;420:4,5, 8 moneys (1) 260:16 month (7) 387:16,21;388:5,22, 24;389:4,13 monthly (2) 388:3;393:4 more (22) 231:24;246:13; 258:22,24;259:18;260:5, 5;261:19;263:12;265:4, 6,15;317:8;346:5; 370:21;380:20;396:20; 397:3;401:22;406:15; 421:7;433:11 morning (1) 322:7 Morris' (1) 411:14 most (1) 248:3 mother (5) 243:10;269:25;270:3, 21;271:6 motion (2) 271:16;272:18 motions (1) 414:19 motivations (1) 347:7
M				
Madam (1) 264:2				
mail (1) 268:18				
maintain (1) 245:17				
major (1) 409:6				
makes (1) 253:10				
making (4) 323:2,8;367:15;409:2				
Manhattan (3) 360:2,3;404:24				
manner (1) 235:14				
many (8) 240:19;270:8;356:13; 370:4;375:4;421:13; 424:15,22				
March (4) 277:23;279:8,13; 376:7				
Marisa (1) 232:22				
mark (3) 327:8;341:13;399:4				
marked (41) 234:23;236:18; 266:16,18;271:14; 279:22,24;283:4; 285:11;292:8,10;294:6, 15;302:13,20;304:10; 305:13;314:22,24;326:2,	material (1) 249:9 matter (5) 260:6;286:21;356:8; 358:17;435:6 may (8) 307:10,14,14;319:13; 327:14;386:16;426:6; 430:8 maybe (11) 231:17;232:15; 277:14;325:10;370:20; 384:13;411:16,18; 428:9;429:25;433:9 mean (71) 231:10,17;232:15; 233:17;237:14;238:9, 12;239:9;240:20; 242:24;243:9;252:14,15, 20;256:5;264:17;268:5; 270:8;273:19;281:13; 283:15,16;284:2; 285:14;286:22;302:10; 303:3,19;307:24;308:4, 18;309:23;311:17; 314:10;328:20;331:18; 343:13;345:6;347:7; 353:5,19;363:13; 365:20;366:11,18; 375:19;376:11;377:8; 380:25;382:6,13; 385:23;386:2;389:10; 390:5,19;392:10,14,15, 22;396:17;399:18; 400:11,11;415:23,25; 416:19;425:6;429:15; 431:7,8 meaning (1) 296:14 means (10) 242:14,16;268:18; 295:8,12;330:5;351:3; 377:2;396:25;434:13 meant (3) 276:10;345:10;431:10 meantime (2) 250:10;427:18 mediation (1) 385:6 meet (6) 232:17,20,24;233:2; 322:16;334:9 meeting (12) 308:17,22;309:9; 310:11,13;311:6,11; 312:9;420:25;422:16,17, 19 MEISTER (276)			

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

mouth (3) 290:21;412:13,13	261:10,17;263:9; 264:9,12;265:13	271:17;292:15,16,16, 24;293:2;300:2,18	245:7;255:17	347:2;351:8;409:19; 426:16;427:6,16
move (6) 248:24;249:9;310:16; 317:6,9;366:7	negotiations (2) 385:19;412:17	number (12) 269:25;284:6,7; 323:15;371:12,14,16,23; 376:20;384:10;395:25; 425:20	occurred (2) 245:10;331:12	original (1) 231:5
Mrs (88) 230:10;231:4;233:14; 234:6,22;237:7;241:9; 243:2;248:9;250:14,18; 252:22;253:8;257:22; 259:14;261:13;263:4; 271:18;272:3,9,19; 276:16;278:13,15,20,23; 280:2,17;281:17;282:9; 287:10;288:10;289:5; 292:11;295:8,17,22,24; 297:7,13;298:18; 300:16;304:8;305:12,14, 23;306:16;315:4; 320:13,24;321:24; 325:4;326:13;327:18; 329:19;331:8;337:19; 339:7;340:20,25;341:5, 20;342:24;343:15; 344:24;346:4,9;349:10; 365:12;369:17,24; 370:18;371:15;372:22; 382:16;387:10;388:19; 392:4;400:3;402:12,15; 404:13;405:18,22; 408:14;417:4;432:25; 434:11	new (38) 233:14,17;244:3; 324:12;341:15,24; 344:17;345:6;346:2,4, 18,19,20;347:14;348:20; 351:19;352:2,6,22; 356:2,5,8,10,11,17,25; 357:2,19;361:2,6; 362:25;363:22;369:20; 388:12;389:10;416:23; 417:24;423:12	oath (4) 279:4;338:15;435:5, 12	October (10) 339:8,9;342:5,7; 402:22;418:5;422:17; 423:2;425:15;433:12	Orly (111) 237:11,21;238:2; 239:4,21;241:24,25; 242:5;243:5,20;244:20; 245:8;246:9;247:11; 255:15;256:18;257:23; 258:15;259:20;265:2,2; 266:25;267:5,15,20,24; 268:8,11;269:13,23; 271:20,25;274:13,19; 278:6;281:19;288:2,11; 289:18;294:2;296:5,18; 298:6;304:13;312:3,24; 313:4;329:16;333:21; 338:16,18;343:2,17; 347:17;348:4,10;349:2, 24;351:11,24;352:18; 354:8,22,23;355:11,12; 359:17,19;360:8;361:8; 367:12,18;368:10,13,20; 376:14;377:14;397:4; 398:18,24;402:16,20; 416:18,19,20,23;417:7, 11,13,14,15,17,21,22,25; 418:7;419:12,22,24; 422:9;424:3;426:19; 427:10,15,21;428:2,3; 429:13;432:12,18; 433:19
much (8) 234:17;246:8;248:5; 260:5;287:24;385:8; 390:6;404:21	newspaper (1) 334:16	object (9) 240:4;247:24;267:17; 343:21;344:11,14; 347:11,12;398:20	offer (1) 435:11	Orly's (23) 260:2;262:6;264:15, 24;267:14,22;293:19; 312:17;313:19,21; 314:12;341:11;347:3; 348:13;355:18;360:19; 375:4,6;376:11;422:15; 423:18,20;424:3
mutual (3) 409:10;413:3,5	newspapers (1) 265:23	Objection (83) 235:3,10;240:3;242:6; 244:12;246:16,22; 247:13;248:6,12,23; 251:10;252:11;257:16, 24;259:3;260:17; 261:11,21;263:14; 264:7;265:8,16;268:23; 269:4,18,19,20;270:5, 24;271:10;275:22; 286:12,25;287:20;288:4, 20;289:21;291:13,14; 293:6;296:24;299:5,11; 302:23;303:7;307:12; 309:21;310:16;313:14; 314:2;316:19,24; 318:10;321:2,11; 328:19;332:23;337:25; 338:8;344:3,12,18; 347:19,21;348:7;349:6; 350:2,16;352:8;356:20, 21;357:5,5,9;379:14; 383:18;390:13;409:24; 412:22;414:25;415:4; 426:11	off (3) 302:2;324:14;434:6	Otherwise (5) 230:25;276:10;404:9; 407:21;410:15
myself (5) 278:22;280:4;359:23; 366:9;375:5	nightmare (1) 403:5	oath (4) 279:4;338:15;435:5, 12	office (4) 411:12,15,16,17	out (9) 249:12;262:24; 305:15;306:9,22;307:6, 19;357:9;430:2
N	nobody (2) 332:5;390:3	object (9) 240:4;247:24;267:17; 343:21;344:11,14; 347:11,12;398:20	offices (1) 413:18	outside (1) 405:10
naive (1) 261:23	Nobody's (1) 366:17	Objection (83) 235:3,10;240:3;242:6; 244:12;246:16,22; 247:13;248:6,12,23; 251:10;252:11;257:16, 24;259:3;260:17; 261:11,21;263:14; 264:7;265:8,16;268:23; 269:4,18,19,20;270:5, 24;271:10;275:22; 286:12,25;287:20;288:4, 20;289:21;291:13,14; 293:6;296:24;299:5,11; 302:23;303:7;307:12; 309:21;310:16;313:14; 314:2;316:19,24; 318:10;321:2,11; 328:19;332:23;337:25; 338:8;344:3,12,18; 347:19,21;348:7;349:6; 350:2,16;352:8;356:20, 21;357:5,5,9;379:14; 383:18;390:13;409:24; 412:22;414:25;415:4; 426:11	OG (20) 425:23;426:9,15,18; 427:6,12,14,25;428:13, 19,24;429:12;430:21,25; 431:5,7,12;433:2,5,14	over (28) 231:20;237:16,16; 242:3;247:14;264:18,18, 19;269:20,21,21;282:7; 302:7,15;327:22;347:4, 5;365:7;380:5;381:4; 384:19;387:15,18;391:2, 23;392:9;406:15;411:3
name (6) 237:24;264:20; 292:23;293:11;360:3; 403:10	none (2) 272:21;383:4	oath (4) 279:4;338:15;435:5, 12	old (1) 247:20	overtaken (1) 354:21
names (1) 305:20	normal (3) 268:13,16;269:14	object (9) 240:4;247:24;267:17; 343:21;344:11,14; 347:11,12;398:20	once (2) 287:8;422:14	owe (1) 390:8
necessary (1) 366:10	Notary (1) 435:24	Objection (83) 235:3,10;240:3;242:6; 244:12;246:16,22; 247:13;248:6,12,23; 251:10;252:11;257:16, 24;259:3;260:17; 261:11,21;263:14; 264:7;265:8,16;268:23; 269:4,18,19,20;270:5, 24;271:10;275:22; 286:12,25;287:20;288:4, 20;289:21;291:13,14; 293:6;296:24;299:5,11; 302:23;303:7;307:12; 309:21;310:16;313:14; 314:2;316:19,24; 318:10;321:2,11; 328:19;332:23;337:25; 338:8;344:3,12,18; 347:19,21;348:7;349:6; 350:2,16;352:8;356:20, 21;357:5,5,9;379:14; 383:18;390:13;409:24; 412:22;414:25;415:4; 426:11	One (39) 236:2;239:8,12; 242:17,19;257:4; 263:22;272:9;299:9; 303:2;308:8,9;319:18, 18,19,19;333:20;353:16, 20;360:5;361:9;372:23, 24;383:6;387:11; 406:15,22;407:16; 410:9;412:3,11;413:7, 17;414:5,6;420:22; 421:7,18;426:23	owes (1)
necessity (2) 270:16;389:20	note (53) 253:14;263:14; 266:25;271:22;272:6,8; 273:18,18,19,20;274:14; 294:17,17;312:15,21; 313:3,7,12,25;314:12; 316:10,18;317:18,20; 318:9;319:6,10,14,22; 320:5,9;323:19,24; 324:9;331:21;332:6; 358:14;360:2;370:10, 15;372:5;378:24; 379:11,25;380:13; 399:18,18,19,23;402:16; 406:10,19;429:15	object (9) 240:4;247:24;267:17; 343:21;344:11,14; 347:11,12;398:20	opinion (2) 334:5,6	
need (12) 232:8;282:25;317:7; 351:19;389:16,19,20,21; 390:2,6;404:12,14	noticed (4) 330:24;331:12;332:4, 5	object (9) 240:4;247:24;267:17; 343:21;344:11,14; 347:11,12;398:20	opportunity (1) 282:22	
needed (2) 355:21;359:23	notice (9) 231:16;274:13;325:5, 24;326:7;332:7,11,13; 334:16	Objection (83) 235:3,10;240:3;242:6; 244:12;246:16,22; 247:13;248:6,12,23; 251:10;252:11;257:16, 24;259:3;260:17; 261:11,21;263:14; 264:7;265:8,16;268:23; 269:4,18,19,20;270:5, 24;271:10;275:22; 286:12,25;287:20;288:4, 20;289:21;291:13,14; 293:6;296:24;299:5,11; 302:23;303:7;307:12; 309:21;310:16;313:14; 314:2;316:19,24; 318:10;321:2,11; 328:19;332:23;337:25; 338:8;344:3,12,18; 347:19,21;348:7;349:6; 350:2,16;352:8;356:20, 21;357:5,5,9;379:14; 383:18;390:13;409:24; 412:22;414:25;415:4; 426:11	opposed (5) 345:25;352:22;356:2; 357:19;368:3	
negative (6)	notified (1) 274:18	obvious (1) 264:19	order (26) 231:25;242:22; 243:21;245:8,16; 249:12;274:22;275:3,7, 11;277:3,18,21;279:7; 281:23,24;297:17; 303:24;334:9;343:11;	

**ORLY GENDER VS.
DALIA GENDER**

**DALIA GENDER
February 7, 2013**

363:14 own (9) 366:14;367:19;398:4; 401:4,6,15,17,19;432:7 owned (12) 349:3,24;350:15; 351:11;352:5;355:12; 391:18;397:16,23;400:9, 13;401:7 owner (1) 365:9 ownership (3) 377:12,12;396:25 owning (3) 350:22,23;351:2 owns (3) 347:18;348:5;420:5	420:3 participate (2) 243:13;266:5 participated (1) 410:3 participation (1) 258:16 particular (2) 316:2;428:5 particularly (1) 273:17 parties (10) 409:7;410:12;413:16, 25;414:3;418:12;419:7; 422:12;434:10,16 partner (5) 281:19;288:16; 312:22;320:3;433:14 partners (3) 281:13;312:23;316:8 partnership (12) 280:19;281:10,11,18; 290:9;291:4;292:13,14; 304:9;326:8;431:9,13 party (5) 385:15,16;416:14,16, 17 patience (1) 259:21 pay (10) 252:19;253:9;260:16; 360:13;361:20;363:6; 364:4,10;388:14;423:22 paying (16) 261:19;263:12; 359:17,19,22;360:15; 361:4,15;362:24; 366:16;378:23;387:20; 388:5,6,23;419:23 payments (3) 379:12;393:2,4 pays (4) 361:10,21;363:6,7 peace (1) 403:8 Pedowitz (13) 363:20;364:11; 365:11,15;366:7;367:23, 25;368:5,12,18;369:13; 370:2;425:10 pending (3) 371:5;399:24;407:17 people (6) 239:9;277:4;403:8,14; 420:10;428:22 per (1) 309:10 percent (6) 381:4;396:14;397:16, 17,24;398:4 percentage (3) 284:14,16;396:25 perhaps (3)	245:7;262:12,16 period (2) 324:7;330:25 permissible (1) 363:17 permission (3) 292:21;294:5,12 person (12) 231:19;237:19; 238:17,24;256:12; 258:18;268:13,16; 269:14;309:17;353:20; 363:5 personally (10) 325:14;412:5,6,9,16; 413:11,12,14,22;415:12 petition (5) 271:16;272:4,4;274:7, 9 petitioner (1) 376:15 pg (1) 263:2 phone (11) 243:11,19;266:6; 268:17;269:24;270:22; 271:7;287:4,6;365:24; 411:3 physical (1) 308:17 physically (2) 308:19,21 pick (3) 243:18;322:18;365:24 picked (2) 243:11;271:7 pile (1) 322:10 place (9) 231:4;281:20;307:7,8, 11;358:23;374:2; 401:23;421:3 places (1) 303:24 plaintiff's (1) 371:3 play (1) 314:6 plead (1) 358:22 please (45) 234:6;235:24;237:7; 241:9,14;247:19,22; 252:5;254:21;258:2,5,5, 8;259:23;262:4,14,19, 23,24;264:3;265:11; 266:14;271:14;297:22; 298:22;304:17;305:12, 18;306:7;307:21;309:3; 310:21;324:13;328:3; 335:16;344:7;349:11; 351:14;355:4;357:9; 359:13;371:4;398:12;	415:16;428:16 pledge (3) 371:20,22,25 pledged (1) 371:24 pm (13) 304:6,6;324:16,17; 359:15,15;387:7,7; 405:13,13;434:8,8,15 point (8) 234:3;272:14;359:23; 363:20;419:7,8;420:11; 430:2 position (4) 274:4,12;275:20; 368:18 possession (5) 295:14;297:2,8; 299:17;340:23 possibilities (2) 286:10,11 possibility (2) 286:9;321:16 possible (4) 286:17;289:17; 358:13;424:20 possibly (1) 290:3 Post (1) 244:3 potentially (1) 375:3 preparation (3) 315:6,14;374:24 prepare (7) 232:18;234:7;236:9, 10,14,23;322:17 prepared (3) 236:18;322:20;375:5 presence (1) 257:22 present (1) 411:9 presented (2) 305:4,9 prevent (3) 276:23;321:16;422:9 prevented (1) 277:3 previous (4) 267:6;329:2,2;421:15 previously (5) 230:5;267:9;305:13; 327:15;370:25 price (4) 259:8;384:6,7,12 printed (1) 424:23 prior (7) 231:7;247:14;257:20; 308:3;311:9;327:21; 328:2 privilege (3)	289:15;340:21;406:5 probably (3) 284:8;310:5;391:7 procedure (10) 242:23;243:22,23,24, 25;334:7,14,19;336:10, 19 procedures (6) 242:21;331:19,19; 334:12,15;348:12 produce (2) 299:23;303:25 produced (9) 233:15,21,23;234:2; 294:18;295:9,12;327:5; 406:20 producing (2) 300:21;303:20 product (1) 422:11 production (4) 295:20;299:24;301:3; 383:4 proliferating (1) 423:12 promise (1) 298:20 promissory (5) 370:10,15;378:24; 379:25;380:13 proper (18) 333:15,18;334:3,4,5, 11,13;335:4,6,9,14,24; 336:4,21,25;337:15,17; 361:19 protect (12) 248:21;261:14,15; 263:6,7;264:14;289:12; 297:17;298:2;323:25; 324:10;337:21 protecting (2) 289:8,11 protection (3) 267:24;268:2,3 provide (9) 233:5;252:25;269:15; 319:4,13,20;345:23; 359:3;426:18 provided (14) 233:6,14;288:12; 290:15;301:8;312:9; 359:5;386:24,25; 388:17;402:4;408:9; 410:20;426:17 provides (1) 416:13 providing (1) 419:22 provision (2) 420:13;422:8 public (2) 334:16;435:24 purchase (2)
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ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

384:6,7 purported (1) 298:5 purportedly (2) 271:20;361:12 purporting (1) 296:4 pursuant (2) 359:9;380:22 pushing (2) 264:20,24 put (16) 240:2;241:8;249:15; 264:23;294:25;334:15; 340:24;350:7;359:8,11; 410:8;420:20,22;422:8; 424:20;426:14 putting (3) 290:21;344:12;356:4	351:13,15;362:22; 370:21;371:15,17;398:8; 13;399:9,12;407:12; 413:15;416:5,12; 427:17;429:5,7,8;430:3, 6,9,17;434:21;435:4,7 reading (13) 273:21;274:10; 280:12;283:3;323:13; 331:4,6;399:16;413:8; 427:3,20;430:18;431:6 ready (3) 370:19;371:8;421:11 really (20) 252:14;259:21;270:8; 286:22;310:2;320:24; 321:5,7,7;323:14; 326:23;337:19;343:14; 383:15;404:11;415:5; 421:8;424:14;430:17; 433:25 re-answer (1) 232:9 reason (7) 236:17;238:23;248:4; 345:12;348:16,19; 377:23 reasons (2) 242:18;289:24 recall (37) 235:8;277:24;279:5,9, 10;282:18;283:13; 285:3;290:14;294:5; 296:10,12,13,16;300:19; 305:14;309:17;311:12; 315:4,16,19;320:24; 321:15;339:7,9;343:4; 383:6,7;385:15,18; 390:15;393:13;403:2; 408:3,5;409:2,17 receive (12) 295:24;315:20;325:6, 7,12,14,15;328:16; 329:8;332:14;388:21; 409:8 received (10) 273:11;290:8;301:12, 15;315:22;327:21; 328:2;379:3;383:4; 408:7 receiving (2) 389:12,15 recess (6) 266:20;304:5;359:14; 387:6;405:12;434:7 recessed (1) 324:16 recipient (1) 371:23 recognize (7) 293:4,14,17,19,21; 405:18,22 recollection (7)	282:24;285:4;300:17; 307:18;336:15;351:20; 396:15 record (55) 230:21;233:24;241:8, 15;252:2,6;253:12,15; 254:15;262:24,24,25; 264:4;266:8;271:14; 278:16;281:8;286:25; 292:12;302:2;304:20; 309:6;314:23;324:14; 325:2;326:6;327:12; 328:13,15;331:15; 335:17;344:9,13;345:3; 351:15;358:15;362:6,7; 364:19;369:12;370:13; 371:16;375:11;387:8, 11;398:13;399:9; 402:10,21;405:19; 406:19;407:24;430:9; 434:6,9 records (4) 340:22;368:21;391:4, 13 redacted (2) 402:4,11 redeem (8) 373:3;375:17,21,23, 25;376:25;390:19,22 redeemed (3) 391:17;396:23;397:2 redeeming (2) 378:7;397:4 redemption (18) 372:15;373:2,5,17,19; 378:16;379:10,15; 381:19;382:2,4;388:7, 11;391:3;396:13,17,17; 398:19 reduced (2) 429:14,15 refer (1) 351:18 reference (1) 279:7 referencing (1) 372:19 referring (3) 372:8;385:21;398:9 reflect (1) 266:8 refrain (2) 312:20;313:3 refresh (5) 282:20,23;307:18; 336:15;351:19 regard (5) 251:3;267:23,23; 343:18;385:20 regarding (5) 252:9;277:25;278:3; 345:23;358:11 reiterate (1)	341:2 relate (1) 272:22 related (10) 282:18;319:13,21; 320:4,8;323:23;324:9; 340:24;359:3,5 relating (1) — 338:9 relaxed (3) 284:25;288:14;289:19 relaxing (1) 284:18 release (11) 412:20;413:7,17,25; 414:5,12,23;415:5; 428:20;430:4,15 released (5) 413:21;414:7,8,16; 415:12 releases (3) 413:3,6,25 releasing (1) 414:11 relevant (2) 319:5,10 relinquished (1) 427:9 rely (1) 352:15 relying (6) 248:20;249:12; 250:14,19;251:8;352:12 remaining (1) 397:3 remember (137) 230:17;233:9,12; 235:18,20;237:3,6; 248:19;251:6,12,15,16, 19,22;254:7,7;273:14, 22;274:17,23,25;277:14; 282:21;285:6,17,19,22, 24;286:5,8,16;287:11, 12,24;288:19,23;289:24; 290:11,13,17,22,24; 291:5;292:4;296:2,7,20; 298:7,9,12,17;299:4,14, 19;300:8,11,24,25; 301:2;303:10,12,14,16, 18;306:24;307:5,9,15; 310:10;311:4,5,7; 315:22;318:24;319:7; 320:6,10,12,14,22; 321:6,7,10,13;325:11; 326:18;336:12,22;337:2, 10,11,13,16,18;343:7,8, 10,11,13;345:14,16; 351:21;353:24;354:6; 364:14,15;369:5;370:3, 3,4;380:16,17;384:14; 386:9;392:2,24;395:5; 401:9,10,22;402:23; 408:25;410:25;411:20,	21;414:18;421:6,8,9,13, 14,20;422:2,4,21,24; 423:4 remind (1) 329:21 remove (2) 272:4;278:6 removed (1) 267:2 repeat (14) 244:7;254:13;262:23; 263:24;267:20;291:18; 306:5;321:18,21;355:2; 372:21;397:20;398:11; 432:14 repeated (5) 249:6,11;263:23; 415:11,11 rephrase (2) 276:3;305:24 reporter (24) 230:25;234:16; 241:16;252:3,7;253:13; 254:16;263:2;264:2,5; 279:20;280:23;304:21; 309:7;331:16;335:18; 344:10;345:4;351:16; 398:14;399:10;407:25; 430:6,10 represent (11) 239:18;279:12;291:8; 329:16;347:5;355:21, 22;366:5;368:5;383:3; 408:7 represented (7) 310:3;341:11;347:2; 355:13,16,20;413:12 representing (5) 412:5,6,15;421:22,23 represents (3) 368:6;412:8,9 reputation (1) 262:9 request (2) 295:20;327:6 requested (18) 241:16;252:3,7; 253:13;254:16;263:2; 264:5;295:20;304:21; 309:7;331:16;335:18; 344:10;345:4;351:16; 398:14;399:10;430:10 requests (1) 369:4 require (1) 244:18 required (3) 275:7,11;334:19 requirement (2) 244:4,10 requirements (1) 334:8 Requires (2)
Q				
qualified (1) 385:14 quickly (1) 327:22 quietly (1) 399:12 quit (1) 253:2 quite (4) 331:9;337:19;341:6; 385:7 quote (4) 253:19;257:18,19; 330:21				
R				
ranges (1) 405:21 re (1) 326:5 reach (3) 410:23;427:7,16 reached (1) 421:2 read (85) 231:14,24;232:6; 239:15,23;241:13,15; 251:25;252:2,5,6;253:4, 7,12;254:15,21;257:18; 258:7;262:25;264:4; 265:22;274:11;280:10, 17;282:23,25;283:21; 290:12;296:8;304:16, 20;305:17;307:23,24; 308:8;309:2,6,18;316:4; 321:19;323:10,11; 329:23,25;330:2,11,20; 331:3,14,15;335:16,17; 339:20,24;341:18;343:6, 11;344:6,9;345:3;				

ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

244:18;332:8 re-read (1) 344:25 reserved (1) 434:20 resided (1) 342:17 resign (1) 337:20 resolution (6) 381:19,22,23,25; 382:3,24 resolved (1) 364:18 resort (1) 317:2 response (7) 272:3;327:6;359:10; 371:12,13;372:3,8 responses (1) 371:3 responsibilities (2) 244:24;245:5 responsibility (6) 244:22;289:12;334:2; 335:13,23;409:6 responsible (2) 258:11,14 rest (1) 317:11 restated (8) 280:19;281:10; 288:14;290:9;291:3; 292:13;407:8;410:16 restriction (1) 284:25 restrictions (3) 284:19;288:13;289:18 result (6) 254:9;265:14;323:7; 23:418:4;422:6 resulted (3) 261:18;263:11;365:7 results (2) 242:24;256:17 Resumed (1) 230:8 resworn (1) 230:11 returns (2) 379:9,15 reversed (1) 355:10 review (10) 231:8,22;232:3,7; 271:18;273:12;290:15; 299:24;300:23;419:17 reviewed (1) 232:11 revised (3) 299:2;380:14,17 revisions (1) 299:8	right (77) 235:24;237:13; 241:11,12;244:4; 249:17;254:24;267:3; 12;268:6;280:3;283:20; 21,25,25;284:6,19; 289:7;290:25;293:3; 300:10;308:11;309:25; 311:15;314:20;328:5; 329:10,18,19;331:4,5; 333:6,24;338:3;339:12; 18;342:8;348:10;353:7; 9;354:15,17,19;355:8; 357:25;362:10;363:23; 366:9,12;368:7;372:11; 373:22;377:13;378:13; 18,19;386:12;389:17; 390:19;399:3;400:12; 403:17;406:12;413:21; 414:6;416:16,19;417:8; 418:16;423:15;425:11; 15;427:11;431:3,21; 433:10;434:20 rights (2) 294:7;422:15 risk (1) 313:12 Robert (5) 233:13;271:17; 272:24;327:13;340:18 Rochelle (3) 287:15;310:5;400:13 role (9) 240:15,17,20;244:19; 247:3,4;265:24;266:2,10 roles (1) 242:20 Roth (6) 274:16;275:20,23; 277:21;286:2;291:21 Roth's (10) 274:21;275:3,7,11; 276:5;277:3,16,18; 279:5;281:22 rule (1) 363:10 S Safety (3) 360:2,3;404:24 Sagi (84) 234:7,22;236:8,10,18; 23,25;237:4;238:21; 239:11;253:21;266:24; 272:20;277:19;282:12; 14;287:16;288:16,17; 290:18,20;293:14,21; 306:18,21;307:4; 308:24;309:15,19; 310:3;311:14;312:3,24; 313:13;314:24;316:12; 15;317:15,17;318:2,21,	23;319:4,12,20;332:21; 334:8,20,21,22;336:5,7, 18,19;340:9,14,16; 377:14;383:17,22;384:2, 8;385:11;387:2;389:23, 25,25;391:13,14;393:8, 10;394:5,6,7,9,11,22; 397:5;401:4,6,11,11,15; 421:23 Sagi's (8) 313:19,20;333:3; 404:6;411:14,16,17; 421:17 sale (67) 239:20,20,22;240:9, 12,16,18;241:25;244:6, 11;245:9,17,25;247:12; 248:10,18,22;250:22; 251:4;252:10;254:12; 255:16;257:15,23; 264:25;270:23;276:24; 277:4;304:12;311:12; 318:9,17,23;319:3; 321:17,17;324:6;325:13, 16;326:5,9,17;327:21; 328:2,18;329:9,11; 331:12;332:8,20; 333:22;334:13;335:3, 24;336:20,24;371:21,23; 372:2;373:2,6,16; 375:23;396:17;399:22, 23;432:20 same (21) 242:13;247:24; 252:17,18;261:25; 271:4;284:3;307:25,25; 308:5,8,10;321:25; 329:2;348:7,20;378:18; 424:16,17;435:7,8 satisfied (1) 419:10 save (1) 435:8 saw (17) 230:15;296:8;315:10; 10,12,15,25,25;316:4; 17;22,23;322:4,6,8,8, 22;328:10 saying (19) 234:13;285:20; 291:18;297:9;310:24; 319:24;329:22;330:6; 344:2;376:4;396:21; 398:10;417:6,18; 419:25;424:11,19,22; 428:15 schedule (1) 398:6 searching (1) 386:11 second (12) 236:2;254:22;257:4; 273:17;292:18;330:3,6,	8;372:14;376:10; 387:13;425:19 secondly (3) 242:19;271:24;291:14 section (1) 250:4 security (1) 399:17 seeing (3) 296:21;315:4,17 seek (12) 245:11,16;254:5; 296:3;305:3,8,11;319:9, 11;323:22;324:8;359:21 seeking (4) 266:25;278:6;300:25; 333:21 seem (1) 272:21 sell (5) 373:11;374:14; 375:25;401:21;402:17 selling (5) 270:17;372:11;377:2, 4;382:7 send (4) 329:13,15;332:12,19 sent (5) 327:10,13;332:10,17, 22 sentence (2) 273:17;376:10 separate (2) 343:19;345:24 series (1) 364:21 session (5) 249:4,5;253:15; 360:10;364:20 set (1) 289:19 setting (1) 330:17 settle (8) 402:16,18,19;404:2,5, 7;410:12;422:13 settlement (36) 324:2;359:25;403:3,4, 7;404:25;405:15,20; 406:6;407:20;408:8,15, 24;409:3,7,8,16,19; 410:5,15,16,23;412:16, 18;413:16;414:4; 419:14;420:9,10,23,23; 426:16;427:7,16; 431:25;432:17 share (7) 350:22,22;371:23; 377:14;378:3;381:5; 397:5 shareholder (2) 374:6,12 shares (120)	239:20,22;240:24; 241:6;243:6;245:18; 256:19,25;257:8;258:21, 25;259:7,8,19;260:16, 22;261:9,20;262:6; 263:13;265:15;270:17; 275:21;284:7,17; 304:13;306:17;321:17; 341:12;347:3,18;348:5, 10,13,18;349:2,2,23; 350:5,12,14,14;351:3,3, 10,11;352:19;354:22; 355:11;356:8;371:21, 24;372:4,11,17;373:3,9, 10,11,14,20,24,25,25; 374:15;375:15,17,22; 377:3,5,6;378:8,17,21; 379:4,10;380:19,25; 381:2,3,6,15,20;382:4,8, 21;385:8;388:8,15; 389:8,10,14;390:18; 391:15,17,22,23;392:18; 396:23,24;397:2,3,4; 400:9,14;401:4,6,7,10, 12,13,14,15,17,20,21,25; 428:9;429:22;432:21 SHEET (1) 435:10 shield (1) 250:21 short (2) 258:19;409:11 show (16) 245:9;246:2;257:7; 292:10;327:7;336:14; 338:21;362:9,10,12,14; 379:9,11;399:3;402:23; 430:20 showed (6) 233:20,25;322:9; 328:4;379:15;400:24 showing (1) 402:11 shows (1) 287:24 side (4) 304:11,14;412:12,13 sign (16) 237:2,5;290:19; 292:22;293:12;294:5,8, 12;296:4,20;298:5; 310:15;410:10,10,11; 434:21 signature (29) 280:2,6;283:9;290:23; 292:18,20;293:4,7,10, 13,15,17,19,22,25; 296:6;303:2;308:12; 329:22;339:16,18; 406:11,21,23;408:12,12; 421:12;423:2;424:21 signatures (2) 308:11,13
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ORLY GENDER VS.
DALIA GENDER

DALIA GENDER
February 7, 2013

signed (45) 266:18;271:16; 280:10;283:7,17,18; 288:2;289:3;290:7,16; 296:11;304:8;309:9; 313:10;316:11;330:7,8; 376:13;384:19;391:2; 23:392:9;407:4,7; 408:21;418:4;419:4,13, 15;423:6,10;424:14,16, 24;427:23;428:12,17; 429:11;431:25;432:11, 16;433:4,13,17;435:13	410:4 somewhere (1) 391:5 son (2) 294:7;306:18 son's (1) 403:12 soon (2) 358:12;404:15 sorry (16) 230:15;234:17,18; 241:12;245:15;250:6; 255:3;274:6;281:2; 285:10;310:12;372:21; 376:20;388:9;401:12; 416:2	standstill (2) 312:6,8 start (8) 347:13;367:19;380:3, 3,5;407:16;430:18; 431:23 started (1) 344:8 starting (1) 388:22 state (9) 339:11;340:3;352:2; 357:18,19,20,23;371:20; 435:24 stated (5) 253:9;317:17;331:25; 362:20;364:19 statement (2) 266:13;429:4 statements (2) 402:4,11 states (1) 316:22 stating (1) 316:16 stay (1) 259:24 steal (1) 366:17 steps (1) 266:24 Sternberg (1) 407:6 still (7) 289:8;347:18;348:5; 381:7,15;421:10;435:12 stipulate (1) 295:6 stock (13) 333:19;346:7;349:2, 24;350:13,15;351:10; 352:5;372:4;384:18; 391:2,20;392:9 stop (19) 248:10,18,22;250:22; 251:4;253:21;254:12; 286:19;318:8,16,22,22, 25;319:3;351:22;380:2; 420:8,10;423:11 stopped (1) 318:19 stopping (2) 247:12;318:20 story (2) 260:21;420:24 stranger (1) 260:9 street (1) 353:20 strike (20) 241:24;289:4;310:17; 318:6;325:6;328:14,24; 335:20;337:5;339:8;	350:3,5;357:15;375:15, 20;378:6;394:14; 402:21;411:4;419:12 strong (1) 317:4 style (1) 236:7 subject (1) 262:2 subjects (1) 237:16 submitted (5) 271:19,23,24;272:2; 273:13 Subpart (3) 425:23,24,25 SUBSCRIBED (1) 435:20 subsequent (3) 249:20,22;390:9 substantial (1) 231:17 successor (1) 302:4 sue (22) 311:14;312:3,14,17; 352:25;356:11,12,13,16, 17;357:3,4,18,23;363:6; 418:10,10;419:7,11; 420:2,2,3 sued (5) 356:10,23;357:2,15; 375:7 sues (2) 363:5,6 sufficient (5) 330:22;331:10;332:2, 6;333:11 suggest (2) 359:8;405:9 suggested (1) 352:10 suing (13) 360:17,19,19,20,24; 361:9,11,25;418:16; 420:8,11;422:9;423:21 suit (1) 423:7 sum (1) 360:4 summons (1) 342:5 superceded (2) 299:3;380:15 supersessions (1) 299:9 support (2) 271:15;394:12 supporting (1) 394:11 supposed (6) 288:8;331:20;332:18; 333:3,4;380:21	supposedly (1) 348:13 supreme (3) 349:15;355:9;358:8 Sure (39) 266:15;268:13; 279:11;283:19;284:2; 289:23;294:10;301:7; 304:18;305:7;313:23; 314:16;319:17;327:3; 332:22;334:2;335:13; 336:16,24;342:13; 343:6;344:25;367:15; 368:5;373:7;383:2,13, 16;391:5,9;393:17; 399:15;406:6;407:2; 414:13;415:11;424:12, 13;432:15 Surrogate (17) 274:16,21;275:3,7,11, 20,23;276:5;277:18; 279:5;281:22;286:2; 291:2,11,21;378:9,10 suspect (1) 241:5 suspecting (1) 367:19 suspend (2) 362:11,11 swore (4) 261:14,15;263:5,6 sworn (2) 376:6;435:20
signing (4) 282:19;283:14;285:4; 311:11 simple (9) 250:18;261:16;263:8; 298:19;301:23;331:9; 341:6;397:21;431:23 simply (5) 272:8;276:20;278:25; 302:4;382:23 single (2) 381:5;410:9 sister (1) 311:14 sit (24) 232:2;235:8;247:17; 251:14,15;264:15,16; 266:6;290:3,5;291:7,10, 25;293:24;294:4;335:2; 338:14,16,18;362:24; 368:11;384:23;393:16; 408:3 Sitting (1) 287:19 six (1) 426:2 slow (1) 416:5 slower (1) 330:13 small (2) 372:23,24 smart (1) 420:21 sold (10) 268:21;371:24;372:4, 16;373:9,14,20;375:14; 380:25;401:25 solidify (2) 341:11;347:2 solution (1) 318:20 somebody (17) 231:18;238:6;260:9; 264:19;265:7;282:14; 285:8,12,23;320:14; 333:18,18;334:20; 353:14;360:11,13;404:2 someone (4) 265:3;296:4;346:6;	sought (1) 267:11 source (2) 246:4;402:13 southern (1) 363:22 speak (5) 254:11;318:21,23; 341:8;361:5 speaking (3) 248:5;344:16,17 specific (3) 374:18;395:16,17 specifically (4) 251:3,5;264:17;363:8 specify (1) 276:11 speculate (1) 310:22 speculating (2) 310:19,20 speculation (1) 383:19 speeches (1) 297:23 spell (1) 293:11 spend (3) 261:24;312:2;341:9 spending (1) 261:24 spent (1) 364:12 split (3) 362:3,17,18 spoke (2) 254:12;318:24 stacks (1) 321:15 stage (1) 330:17 stamped (2) 370:16;406:11 stamps (2) 294:19,25 standing (1) 263:16	standstill (2) 312:6,8 start (8) 347:13;367:19;380:3, 3,5;407:16;430:18; 431:23 started (1) 344:8 starting (1) 388:22 state (9) 339:11;340:3;352:2; 357:18,19,20,23;371:20; 435:24 stated (5) 253:9;317:17;331:25; 362:20;364:19 statement (2) 266:13;429:4 statements (2) 402:4,11 states (1) 316:22 stating (1) 316:16 stay (1) 259:24 steal (1) 366:17 steps (1) 266:24 Sternberg (1) 407:6 still (7) 289:8;347:18;348:5; 381:7,15;421:10;435:12 stipulate (1) 295:6 stock (13) 333:19;346:7;349:2, 24;350:13,15;351:10; 352:5;372:4;384:18; 391:2,20;392:9 stop (19) 248:10,18,22;250:22; 251:4;253:21;254:12; 286:19;318:8,16,22,22, 25;319:3;351:22;380:2; 420:8,10;423:11 stopped (1) 318:19 stopping (2) 247:12;318:20 story (2) 260:21;420:24 stranger (1) 260:9 street (1) 353:20 strike (20) 241:24;289:4;310:17; 318:6;325:6;328:14,24; 335:20;337:5;339:8;	350:3,5;357:15;375:15, 20;378:6;394:14; 402:21;411:4;419:12 strong (1) 317:4 style (1) 236:7 subject (1) 262:2 subjects (1) 237:16 submitted (5) 271:19,23,24;272:2; 273:13 Subpart (3) 425:23,24,25 SUBSCRIBED (1) 435:20 subsequent (3) 249:20,22;390:9 substantial (1) 231:17 successor (1) 302:4 sue (22) 311:14;312:3,14,17; 352:25;356:11,12,13,16, 17;357:3,4,18,23;363:6; 418:10,10;419:7,11; 420:2,2,3 sued (5) 356:10,23;357:2,15; 375:7 sues (2) 363:5,6 sufficient (5) 330:22;331:10;332:2, 6;333:11 suggest (2) 359:8;405:9 suggested (1) 352:10 suing (13) 360:17,19,19,20,24; 361:9,11,25;418:16; 420:8,11;422:9;423:21 suit (1) 423:7 sum (1) 360:4 summons (1) 342:5 superceded (2) 299:3;380:15 supersessions (1) 299:9 support (2) 271:15;394:12 supporting (1) 394:11 supposed (6) 288:8;331:20;332:18; 333:3,4;380:21	supposedly (1) 348:13 supreme (3) 349:15;355:9;358:8 Sure (39) 266:15;268:13; 279:11;283:19;284:2; 289:23;294:10;301:7; 304:18;305:7;313:23; 314:16;319:17;327:3; 332:22;334:2;335:13; 336:16,24;342:13; 343:6;344:25;367:15; 368:5;373:7;383:2,13, 16;391:5,9;393:17; 399:15;406:6;407:2; 414:13;415:11;424:12, 13;432:15 Surrogate (17) 274:16,21;275:3,7,11, 20,23;276:5;277:18; 279:5;281:22;286:2; 291:2,11,21;378:9,10 suspect (1) 241:5 suspecting (1) 367:19 suspend (2) 362:11,11 swore (4) 261:14,15;263:5,6 sworn (2) 376:6;435:20
T				
taint (1) 260:15 tainted (2) 262:10,10 talk (12) 237:22;245:20,24; 246:3;247:10;248:9,17; 282:5;323:4;338:16,18; 367:2 talked (5) 237:15,17;238:4; 319:7;421:15 talking (20) 237:19;239:16;250:3, 5;251:2,3;261:4;280:13; 282:4;306:14;323:2; 332:7;378:19;397:10; 401:13;412:12;417:19; 429:16;432:20,22 TAP (1) 274:6 task (2) 298:4,10 tax (2) 379:9,15 technical (3) 342:12;345:12;368:15				

ORLY GENDER VS.
DALIA GENDERDALIA GENDER
February 7, 2013

technicality (1) 345:21	336:14;338:15;341:2; 357:17;368:11;384:23; 393:16;404:10;408:3	19;427:8;428:10; 429:21;431:8,12,17; 432:5,12,18,21;433:2	11,12,16,18;290:2; 292:25;293:3,14;294:2; 296:5,18;298:6;304:13; 306:21;308:24;310:4; 311:20,21;312:3,17,24; 25;313:4,13,20,20,21; 314:13;323:25;324:10; 329:17;335:12,22; 336:7;339:11;340:3; 341:10;343:2,17,19; 346:25;347:18;348:5; 14;349:2,24;351:11; 354:22,24;355:11,12; 359:2,17,19;360:8,19; 24;361:8,13,21,21,23; 362:19;363:2,6,7,14; 365:8,9;366:4;367:12; 18,20,21;368:9,13,20; 374:21;375:6;397:4,5; 398:18;412:9,16,19; 414:2,7,10,12;415:4; 416:19,22;417:2,5,13; 14,25;418:15;419:22; 420:4,5;422:10;425:17; 23;426:9,15,18,19; 427:6,10,12,14,15,22,25; 428:2,3,13,19,24; 429:12,14,24;430:14,21; 25;431:5,7,12;432:4,8, 12,18;433:2,5,14	431:17,19;433:19
telling (5) 237:17;255:22; 369:17;375:24;400:19	today's (1) 232:18	TPR's (3) 244:23;378:16;403:12	truth (1) 237:18	
ten (4) 252:17,18;321:21; 400:13	together (3) 409:18;410:8;420:18	transaction (2) 306:10;307:3	try (7) 237:23;298:21; 311:13;402:15;403:6; 422:9;423:11	
terminated (2) 288:15;289:19	told (29) 249:19;251:5;255:15; 258:19;270:12;271:7; 275:20;288:19,23;300:6; 8,19;314:10;317:22; 334:18,22;336:5,7,9; 345:15;356:23;359:20; 22;360:11;369:21; 371:10;384:3,12;400:25	transactions (7) 305:16;306:12,16,23, 25;307:7,19	trying (21) 248:10,17,22;254:11; 259:21;280:13;284:5,7; 318:5,22,22,25;319:3; 352:19;366:17;403:3; 413:10;414:10;415:6; 424:8;431:21	
termination (1) 284:18	tomorrow (1) 404:10	transcript (9) 231:6,8,10,23;237:8; 254:20;362:22;434:21; 435:4	turned (1) 302:7	
terms (2) 390:10;419:9	took (9) 274:22;281:20;368:2; 374:2;401:23;408:14; 20;409:20,22	transfer (5) 371:20,22,25;431:8,12	turning (1) 280:23	
testified (5) 230:5,6;267:8;318:15; 360:12	top (3) 293:5,9,23	transferred (4) 348:12,13;371:24; 431:17	twice (2) 357:3,4	
testimony (10) 238:13;240:5,5;254:4; 257:17,17,20;285:18; 357:17;435:4	topic (1) 253:24	transferring (3) 432:5,12,18	two (7) 233:3;307:25;308:4,7; 312:23;315:13;317:4	
thanks (1) 297:21	towards (1) 396:24	transfers (10) 393:22,24;394:5,15; 395:2,6;402:5,12,13; 433:2	two-minute (1) 304:4	
therefore (1) 347:20	TPR (168) 239:20,22;240:23; 242:21;244:5,10,15,18, 19,21;245:18;256:19,25; 257:8;258:21,24,25; 259:19,19;261:8,19,20; 263:12,13;265:15,15; 266:24;269:16;271:8; 288:16;304:11,23; 305:15;306:10,12,17,21; 309:16;312:12,20;313:3, 24;314:19;316:9,13,16, 17;320:7;321:17;323:3, 8,22;326:8,10;331:19; 332:10,12,17;348:13; 349:3,24;350:15; 351:12;352:5;354:23; 355:11,12;359:25;365:7, 8;369:14;371:21,23; 372:5,5,11;373:10,11, 13,14,20,24;375:16,21; 377:9,10,12;378:8,21, 23;379:3,12,18,20; 381:3,7,10,10,16,17,20, 23,25;382:3,5,6,17,23; 384:2,18,19;387:19; 388:4,23;389:5,6,9,17, 24;391:3,7,17,19;392:8; 393:2,8,11,17,24; 396:15;397:2,16,17,24; 398:4;400:9,11;401:8, 13,14,15,17,19;402:5; 406:21,24;408:12; 414:9;416:24,25;417:3, 24;418:2;426:4,10,10,	treasury (1) 396:24	Type (1) 262:24	
thinking (6) 238:7,7;264:16;290:6; 318:3;429:23		treat (1) 377:17	U	
third (5) 272:4;274:7,9;385:15, 16		treated (1) 377:25	UCC (39) 239:20,21;240:9,12, 16,18;241:25;245:9,17, 25;248:18,22;250:22; 251:4;252:9;257:15,23; 311:12;318:8,16,22; 321:17;324:6;325:13, 16;326:5,9,17;327:21; 328:2,18;329:9,11; 331:12;332:7,20;335:3; 361:5;399:23	
thoroughly (3) 231:15,24;232:6		TRI (13) 304:13;306:17; 341:12;347:3;349:2,24; 350:12,15;351:8,10; 352:5;355:11;429:22	unclear (3) 253:10;351:4,5	
though (2) 237:23;255:8		trial (2) 344:21;347:5	undated (2) 326:4,7	
thought (17) 230:16;241:22; 243:15,16;292:5;366:8; 368:7,8;384:12;391:14; 406:7,19;411:23; 419:16;420:15;422:7,13		trickery (1) 317:2	under (4) 279:4;338:15;435:5, 12	
three (1) 434:13		tried (2) 318:7;364:12	underneath (1) 423:2	
TI (3) 305:15;306:10,12		true (9) 240:10;272:23; 295:11;330:10,12; 338:10;387:17;429:18; 435:8	understood (3) 351:6;418:7;433:10	
times (9) 252:17,18;270:6,8; 356:13;375:5,7;424:15, 22		Truly (1) 364:14	unfortunately (1) 242:23	
tired (3) 323:5;330:13;430:18		Trump (8) 270:17;277:25;278:2; 304:12;306:13,17; 307:4;353:13	unquote (1) 330:25	
title (1) 435:6		trust (171) 242:16;244:20; 245:12;246:9;247:11; 257:23;258:15;259:2, 20;260:6;261:10,14,15; 263:6,7;265:3,5,5; 267:16,16,25;268:4,9, 12,17;269:14;271:20,25; 275:21;277:23;279:7; 281:19;288:2;289:6,9,	unsuccessful (2) 416:25;417:25	
titled (1) 405:20			unwind (1) 333:22	
today (37) 231:9;232:2,12;235:8; 251:14,16;290:3,5; 291:7,10,25;293:24; 294:4;299:10;312:8; 315:10,10,12,15,24; 316:5;317:22;318:11; 322:6,16,23;335:2,3;			up (32) 243:11,18;245:9; 246:2;250:16;257:7;	

**ORLY GENDER VS.
DALIA GENDER**

**DALIA GENDER
February 7, 2013**

269:16;270:4;271:7; 276:23;322:18;338:4; 12;344:22;360:4;364:3; 365:24;385:17;427:6,13, 15,22,25;428:4,6,14,19, 25;429:12;430:21; 432:9;433:6 upcoming (1) 244:6 upon (3) 323:3;343:18;396:13 use (2) 337:10;390:20 using (1) 396:16 Usually (4) 250:20,23;311:8; 418:23	403:9 Warren (1) 232:22 way (22) 238:18;242:15; 256:18;276:7,9,11,18; 289:19;295:19;297:5; 299:3;324:6;341:21; 351:24;370:24;377:14; 380:15;381:14;388:3; 426:14;433:22 ways (1) 258:23 weak (1) 317:2 week (1) 410:24 weigh (2) 254:3,6 weighed (1) 253:20 weren't (2) 247:5;325:20 what's (19) 271:13;275:25; 277:11;292:10;305:13; 309:4;314:23;327:15; 330:15;331:21;370:13, 19,25;372:25;373:17; 378:14;389:10;407:17; 433:7 whatsoever (3) 279:17;291:16;385:19 whenever (3) 389:19,20;422:18 WHEREUPON (27) 230:1;241:15;252:2,6; 253:12;254:15;262:25; 264:4;266:20;304:5,20; 309:6;324:15;331:15; 335:17;344:9;345:3; 351:15;359:14;387:6; 398:13;399:9;405:12; 409:11;430:9;434:7,15 whole (7) 239:15;247:18; 269:20;398:23;420:11; 429:5,8 who's (3) 360:15;362:24;364:10 whose (11) 285:16,19;340:2; 363:12,24;402:15,17; 403:6,11;420:12,14 willing (2) 258:24;338:18 win (4) 352:18;356:7;418:21; 424:5 wins (2) 418:18,19 wire (8) 393:22,24;394:3,15;	395:2,6;402:5,12 wires (1) 395:18 withdraw (2) 318:13;362:13 Withdrawn (1) 318:12 without (7) 303:2;310:15;402:16, 20;419:24,25;420:2 witness (174) 230:1,4;231:2;234:3, 13,17,19;235:5,12; 239:25;241:11,17; 242:8;244:14;245:3,22; 246:17,23;247:17,20; 248:7,14;249:7;251:11; 252:4,13;254:13,17,23; 255:9,14,20;258:9; 259:4;261:22;263:15; 264:8;265:17;267:19; 268:25;269:6,22;270:7; 272:11,14;273:7,21; 274:10;275:24;280:25; 281:6;282:3;283:3,10; 286:14,20,22;288:6,22; 289:22;291:17;297:20; 299:13;300:9;301:18,21, 24;302:3,9,25;303:9; 304:18,22;305:19; 307:13;309:4,8,22; 311:20,24;313:15,18; 317:13,25;320:17,18,21; 321:4,12,18,20;323:13; 325:17,20;326:10; 329:5;331:6,17;332:25; 338:11,24;341:17; 342:21;344:4,8;345:5; 346:20;347:22;348:8; 350:17;352:9;356:22; 357:6,10;358:21;359:7; 360:11,13;361:18; 364:18,25;369:3,7,15; 371:9,19;374:8;376:18; 379:19;381:9;385:3,22; 386:13;388:10,13; 390:14,22;391:11; 392:6;394:18;396:6,18; 397:9;398:10,15,22; 399:11,16;400:22;402:6, 8;404:11,14,18;405:5, 11;406:2;407:2,10; 410:18;411:22;413:8; 414:13;415:6,9;418:19, 22;424:7,10;427:3,20; 430:11;431:6;434:4 witness' (1) 339:2 word (5) 264:23;337:10;344:2; 390:20;396:16 words (1) 290:21	work (3) 234:18;420:18;422:12 worked (1) 409:18 working (2) 343:24,25 write (7) 234:16;270:14,16; 280:24,25;369:4;420:21 writing (5) 236:7;340:25;359:9; 376:12;410:8 written (7) 276:18;359:12; 384:11,13,14,24;421:14 wrong (3) 270:13;411:19,24 wrote (1) 376:13
V			Y
valuable (1) 397:3 valuation (7) 384:22,24;385:10,10, 12,13,16 value (3) 384:8;385:8;433:18 valued (1) 433:21 variety (2) 316:8,17 verbalize (1) 230:14 verified (5) 330:5,10;339:3,13; 358:18 verifying (3) 331:24;339:17,24 victim (2) 348:11,17			year (4) 342:10;343:16,20; 387:15 yearly (1) 379:11 years (4) 247:20;260:10; 387:15,18 yesterday (1) 232:25 Yoav (3) 287:8;314:6;404:22 Yonite (1) 407:5 York (25) 244:3;341:15,24; 344:17;345:6;346:2,5; 348:20;351:19;352:2,6, 22;356:3,5,8,11,11,17, 25;357:2,19;361:2,6; 362:25;363:22
W			
Wait (36) 230:23;236:2;239:24, 24;240:2;241:9;247:15, 15,15;249:2;250:11; 273:25;281:25;282:6; 294:21;297:19,23; 311:19,22;312:12; 326:11;330:6;344:12; 357:8;363:16;372:14; 387:13;397:8,12; 402:24;416:6;424:6; 425:7,19,19,19 waiting (3) 263:18;283:5;371:7 walk (1) 250:16 wants (2) 243:8;396:4 war (1)			

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TR INVESTORS, LLC, GLENCLOVA)
INVESTMENT CO., NEW TR EQUITY I,)
LLC, NEW TR EQUITY II, LLC, and TRANS-)
RESOURCES, INC.,)

Plaintiffs,)

v.)

C.A. No. 6697-CS

ARIE GENDER and TPR INVESTMENT)
ASSOCIATES, INC.,)

Defendants.)

MEMORANDUM OPINION

Date Submitted: January 3, 2013

Date Decided: February 18, 2013

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STRINE, Chancellor.

I. Introduction

This is a motion for summary judgment in a long-running dispute over the ownership of Trans-Resources, a Delaware corporation. The plaintiffs are the Trump Group, which took a 47% stake in Trans-Resources in 2001. The defendants are Arie Genger, the founder of Trans-Resources, and TPR Investment Associates, the holding company through which Genger owned Trans-Resources. After the Trump Group invested in Trans-Resources, Genger retained, through TPR, a majority 53% stake in the company. But, in 2004, Genger divorced his wife, Dalia, and as part of his divorce settlement, divided his 53% stake into three smaller blocks. Genger kept for himself one of these blocks, a 14% share in Trans-Resources (the “Genger Shares”). The other two blocks, each just under 20% of Trans-Resources, were given to trusts for his son, Sagi (the “Sagi Trust Shares”), and daughter, Orly (the “Orly Trust Shares”). Genger purported to retain a proxy over the Sagi Trust Shares and the Orly Trust Shares. Dalia took control of TPR, which no longer held any Trans-Resources stock, but had various other assets.

The transfer of the Trans-Resources stock out of TPR violated the terms of the Stockholders Agreement that TPR had signed with the Trump Group. Under the Agreement, Genger was not permitted to transfer the Trans-Resources stock without first giving the Trump Group notice and, in some cases, the option to buy the stock. The Agreement also provided that if Genger did transfer Trans-Resources stock in violation of the Agreement, the Trump Group had the right to buy the stock.

In 2008, the Trump Group discovered the transfers. The Trump Group then entered into a Stock Purchase Agreement with the Sagi Trust whereby it bought the 20% Sagi Trust Shares. TPR was also a party to the Stock Purchase Agreement, and the Agreement provided that, if the transfer of the Trans-Resources stock out of TPR to the Sagi Trust should prove void for any reason, the Trump Group would be considered to have purchased the Sagi Trust Shares from TPR directly. The Trump Group then filed a § 225 action to assert its right to elect a majority of the Trans-Resources board of directors, on the ground that it now owned two-thirds of Trans-Resources' stock.

Genger counterclaimed, asking this court to declare that he had the right to vote all of the Trans-Resources stock formerly held by TPR, on account of the proxy he claimed. He also asked this court to declare that he owned the Genger Shares, and that the Orly Trust owned the Orly Trust Shares. In July 2010, after a trial, I found that the 2004 transfers were void. Because the transfers were void, the Trans-Resources stock reverted to TPR. I then found that the Trump Group had the right to buy the Sagi Trust Shares from TPR. As to the Genger and the Orly Trust Shares, I made no findings beyond ruling that these shares were owned by TPR, and that Genger could cure the void transfer of shares to himself by signing on to the Stockholders Agreement. My ruling thus focused on those issues that were necessary to determining which party had the right to elect the members of the Trans-Resources board, which was the critical issue in the § 225 action.

When the parties could not agree how to implement my decision, I reconsidered my opinion, taking into account a Side Letter Agreement that the Trump Group had entered into with TPR at the same time as the Stock Purchase Agreement. Under the

Side Letter Agreement, the Trump Group had the right to purchase the Genger Shares and the Orly Trust Shares from TPR, in the event that the 2004 transfers were invalidated, and the Trans-Resources stock reverted to TPR. I issued a new opinion that gave effect to the Side Letter Agreement, and thus found that the Trump Group had the right to buy all of the shares improperly transferred from TPR, not just the Sagi Trust Shares. The Trump Group then purchased the Genger Shares from TPR and placed the money into escrow.

Genger appealed my decisions to the Supreme Court. In 2011, the Supreme Court upheld my July 2010 opinion in full, and my August 2010 decision in part. As to the July 2010 ruling, the Supreme Court upheld my determination that the Trump Group had the right to buy the Sagi Trust Shares, and that none of the Trans-Resources stock wrongfully transferred by TPR was covered by a proxy. As to the August 2010 ruling, the Supreme Court found that my determination that TPR could vote the Genger and the Orly Trust Shares “pose[d] no problem.”¹ But, the Supreme Court ruled that I could not make a determination as to the ownership of the Genger Shares and the Orly Trust Shares, because two indispensable parties—TPR and the Orly Trust—had not been joined to the action. Therefore, the Supreme Court reversed my decision on the ultimate ownership of these shares. Nevertheless, the Supreme Court left undisturbed my findings that the 2004 transfers were void, that the Trans-Resources stock reverted back to TPR, and that the Trump Group had the right to purchase the Trans-Resources stock held by TPR.

¹ *Genger v. TR Investors, LLC*, 26 A.3d 180, 201 (Del. 2011) [hereinafter *Supr. Ct. Op.*].

The Trump Group and Genger then negotiated a Revised Final Judgment Order, in which they agreed that the Trump Group owned 67% of Trans-Resources, consisting of its original 47% stake and the approximately 20% Sagi Trust Shares. The parties also stipulated that TPR had the right to vote the Genger and Orly Trust Shares, and that the Trump Group had the right to purchase these shares under the Stockholders Agreement. This flowed logically from my prior findings, affirmed on appeal, that Genger's proxy did not run with the Trans-Resources stock transferred out of TPR; that Genger's violation of the Stockholders Agreement caused the Trans-Resources stock to revert back to TPR; and that, because of this violation, the Trump Group had the right to buy the stock.

Immediately after the Supreme Court handed down its decision, the Trump Group filed this action against Genger and TPR. By joining TPR as a defendant, the Trump Group sought to correct for the absence of TPR in the prior action, which had caused this court's determination that the Trump Group owned the Genger Shares to be reversed. The Trump Group now moves for summary judgment on the ground that there are no genuine issues of fact as to its ownership of the Genger Shares. TPR cross-moves for summary judgment, seeking an order that the funds that the Trump Group paid for the Genger Shares should be released from escrow.

I find in favor of the Trump Group. The doctrine of issue preclusion prevents the relitigation of an issue that has been litigated and decided in a previous action, when the decision on that issue was essential to the previous action. The decisions that the 2004 transfers were void, that the Trans-Resources stock reverted to TPR, and that the Trump

Group had the right to buy this stock, were essential to the previous action. And, they were memorialized in the Revised Final Judgment Order, which Genger and the Trump Group negotiated. Therefore, my rulings on these issues have issue preclusive effect, and Genger does not have the right to relitigate them.

By joining TPR to this action, the Trump Group has corrected for the jurisdictional defect in the prior action that led my finding that it could purchase the Genger Shares to be reversed. The Trump Group has not attempted to join the Orly Trust as a party, and the Orly Trust Shares are not before the court.² Because it is settled that the Trump Group has the right to buy the Genger Shares, the only issue I must decide is whether it has actually done so.

The Trump Group has submitted an affidavit under Rule 56(e) attesting that it has placed the funds for the Genger Shares into escrow, and that it has taken possession of the shares. Because Genger has not shown that there is any triable issue of fact as to the Trump Group's purchase of the Genger Shares, I grant summary judgment to the Trump Group. Genger has raised a host of arguments why summary judgment may not be granted here, but because he is precluded from relitigating the issues that were decided in the prior action, I may not consider them. And, Genger acknowledges that if the Trump Group benefits from issue preclusion, it is entitled to summary judgment. Even so, I

² The ownership of the Orly Trust Shares is the subject of another action before this court, *Genger v. TR Investors, LLC*, C.A. No. 6906-CS. This action has been stayed by order of the New York Supreme Court.

address Genger's arguments, and explain why they would make no difference even if I were to take them into account.

But, I do not grant TPR's cross-motion to have the funds paid for the Genger Shares released from escrow. The Trump Group and TPR signed an escrow agreement that governs the release of the funds. TPR wants me to ignore the escrow agreement, which the parties bargained for, and order that the escrowed funds be released to it now. Because the parties have a contract that governs the release of the escrowed funds, and there is no equitable reason for me to override it, TPR's motion is denied.

II. Background

Where the facts in this section are not referenced, they are taken from our Supreme Court's opinion in August 2011, and constitute those fact-findings of this court that the Supreme Court relied upon in its decision.³ Because the litigation in Delaware has proceeded in parallel with litigation in state and federal court in New York, I present the action in these three sets of cases together, in more or less chronological order.

A. The Trump Group Gets Embroiled In Trans-Resources

In 1985, Arie Genger formed Trans-Resources, a Delaware corporation. Trans-Resources was entirely owned by TPR Investment Associates, Inc. Genger owned a 51%

³ See Supr. Ct. Op. In this opinion, if a citation to a court document is identified by date but not jurisdiction, it refers to the previous action in this court, *TR Investors, LLC v. Genger*, C.A. No. 3994-CS.

majority interest in TPR. His wife Dalia, and beneficial trusts for his children Sagi and Orly, the Sagi Trust and the Orly Trust, held a 49% minority interest in TPR.⁴

Trans-Resources was initially successful, but by 2001 was nearly insolvent. Jules Trump, a friend of Genger, then offered to bail out Trans-Resources. Trump and his brother Eddie effected this bailout through two entities that they controlled, TR Investors, LLC, and Glenclova Investment Co., two of the plaintiffs in this action (collectively, the “Trump Group”).⁵ The Trump Group bought almost all of Trans-Resources’ \$230 million debt at a fraction of its face value. The Trump Group then converted this debt into a minority 47.15% stake in Trans-Resources. This left TPR with a 52.85% stake.⁶

The rights of the Trump Group and TPR were governed by a Stockholders Agreement. The parties to that Agreement were the Trump Group, TPR, and Trans-Resources, and the Agreement provided that the Trump Group and TPR “directly and

⁴ This 49% interest was held by a limited partnership, D&K LP. Dalia was the general partner of D&K LP, with a 4% interest. The Sagi Trust and the Orly Trust were limited partners, with a 48% interest. *See* Pls.’ Op. Br. Ex. A Schedule 3.2 (“Stockholders Agreement” (Mar. 30, 2001)) [hereinafter SA].

⁵ TR Investors took a 25.18% stake in Trans-Resources, and Glenclova took a 21.97% stake. *See* SA Schedule A. The Trump Group includes the two other plaintiffs in this action, New TR Equity I, LLC, and New TR Equity II, LLC. These two entities did not take part in the 2001 bailout. Instead, they purchased shares from the Sagi Trust under the 2008 Stock Purchase Agreement. *See TR Investors, LLC v. Genger*, 2010 WL 2901704, at *11 (Del. Ch. July 23, 2010) [hereinafter July 2010 Op.]; *see also* Def’s. Pre-Tr. Br. Ex. 2 (Dec. 3, 2009) (“Stock Purchase Agreement” (Aug. 22, 2008)) [hereinafter SPA].

⁶ The parties bargained for a 51/49 split of the shares. The Trump Group permitted Genger to retain a 51.85% stake because Trans-Resources’ lender, Bank Hapoalim, had an option over 1.85% of Trans-Resources’ stock, known as the “Balance Shares.” If Bank Hapoalim did not exercise its option, the Balance Shares were to be distributed to the non-TPR stockholders, in proportion to their stockholdings. July 2010 Op. *5; *see* SA § 1.6. It is undisputed that Bank Hapoalim did not exercise its option.

indirectly own[ed] 100% of the outstanding common stock” of Trans-Resources.⁷ The Stockholders Agreement set out a formula determining who had the right to designate directors to the Trans-Resources six-person board.⁸ The Agreement limited the ability of all stockholders to transfer their shares without the consent of the other stockholders. TPR was only permitted to transfer its holding in Trans-Resources freely to Genger, entities controlled by Genger or TPR, Genger’s estate, and (on Genger’s death) Genger family members and trusts.⁹ And, even in the case of such a permitted transfer, TPR still had to give the Trump Group “written notice.”¹⁰ If Genger wished to have TPR distribute its Trans-Resources stock to non-permitted transferees, he had to give the Trump Group both written notice and the right of first refusal. If Genger attempted to distribute TPR’s Trans-Resources stock in violation of the Stockholders Agreement, such a distribution was void, and the Trump Group would have the right to purchase those shares.

In 2004, Genger divorced Dalia. As part of the divorce settlement, Genger transferred control of TPR to Dalia.¹¹ He also caused TPR to transfer its 52.85% stake in

⁷ SA pmbl. Genger was not a party to the Stockholders Agreement, except as to one sentence in respect of Trans-Resources’ key man life insurance. *Id.* at 40.

⁸ *See id.* § 1.2. The Stockholders Agreement provided that, so long as the Trump Group, TPR, and their permitted transferees controlled a majority of Trans-Resources stock, these stockholders would vote in a bloc so that they designated all six members of the Trans-Resources board. To simplify for the purposes of this opinion, the Agreement provided that the side with the larger holding (either the Trump Group or TPR) would designate four directors, and the side with the smaller holding would designate two directors.

⁹ July 2010 Op. *3-4; *see* SA § 2.1.

¹⁰ SA § 2.1.

¹¹ Dalia did not receive Trans-Resources stock. In addition to the Trans-Resources stock, TPR held other assets, supposedly with a total equity value of about \$20 million in October 2004. *See* Pls.’ Post-Tr. Op. Br. Ex. A, Schedule III(i) (Jan. 15, 2010) (Marital Property (Dec. 31, 2003)) (TPR assets).

Trans-Resources, giving 13.99% to himself (the Genger Shares), 19.43% to the Sagi Trust (the Sagi Trust Shares), and 19.43% to the Orly Trust (the Orly Trust Shares). The trustees of the Sagi and Orly Trusts purported to give Genger irrevocable proxies allowing him to vote these shares for the rest of his life. In addition, the trustees and Genger signed voting trust agreements, under which, if the proxies were ever deemed invalid, the trustees would be obligated to vote their trusts' shares in accordance with Genger's wishes.¹² In his divorce settlement, Genger represented and warranted that "*the TRI Stock [owned by TPR] represents 52.85% of the issued and outstanding shares of common stock of TRI*" and that, apart from options held by Trans-Resources' lender, Bank Hapoalim, on 1.85% of Trans-Resources' stock, "*there exist no other direct or indirect ownership interests in TRI.*"¹³ But, Genger also represented in his divorce settlement that "*[e]xcept for the Consent of TPR . . . no consent, approval or similar action is required in connection with the transfer of TRI Stock.*"¹⁴ That representation was false, because the Stockholders Agreement required that Genger give the Trump Group "written notice" of the transfer to himself, and the right to buy the shares transferred to the Sagi Trust and the Orly Trust.¹⁵ Genger did not give that written notice and right of first refusal, and thus violated the Stockholders Agreement in addition to making a false representation in his divorce agreement.

¹² See Def's. Pre-Tr. Br. Exx. 23-25 (Dec. 3, 2009) (voting trust agreements).

¹³ Genger Br. in Opp'n Ex. 6 art. II § 9(a) (Marital Settlement Agreement (Oct. 2004)) (emphasis added) [hereinafter MSA].

¹⁴ *Id.* (emphasis added).

¹⁵ SA §§ 2.1, 3.1.

In 2008, Trans-Resources was again having financial difficulties, and the Trump Group agreed to bail out the company a second time. The Trump Group negotiated with Bank Hapoalim to reduce Trans-Resources' debt load.¹⁶ And the Trumps and Genger negotiated an agreement whereby, in return for further investment, the Trump Group would take majority control. During their negotiations, the Trump Group discovered that Genger had transferred stock to himself and his children's trusts in violation of the 2001 Stockholders Agreement. Despite their shock at discovering this violation, the Trumps nevertheless finalized their agreement with Genger.¹⁷ But, Genger then reneged on that agreement, because he had found a way of channeling funds from a subsidiary of Trans-Resources to the parent company, and no longer needed the Trumps' assistance. Genger also threatened to sue the Trumps if they challenged the propriety of the 2004 transfers.

**B. The Trumps Sue In This Court And Federal Court In New York
To Take Control Of Trans-Resources**

The Trumps responded by informing TPR and Trans-Resources that they were exercising their right under the Stockholders Agreement to purchase the shares subject to the 2004 transfers, and filed suit in the United States District Court for the Southern District of New York to enforce the agreement.¹⁸ At the same time as filing suit, the Trump Group adopted a more efficient method of obtaining control: it purchased the Sagi

¹⁶ Bank Hapoalim was no longer willing to negotiate with Genger, because it had lost confidence in him. July 2010 Op. *8.

¹⁷ *Id.* at *9.

¹⁸ Compl., *Glenclova Inv. Co. v. Trans-Resources, Inc.*, 08-CV-7140(JFK) (S.D.N.Y. Aug. 11, 2008). The Stockholders Agreement had a forum selection clause providing that disputes would be resolved in the United States District Court for the Southern District of New York, or, if that court did not have jurisdiction, in New York state court in Manhattan. SA § 6.4.

Trust Shares from Sagi, who was hostile to Genger, under a Stock Purchase Agreement.

To cover its bases, the Trump Group negotiated that, if the 2004 transfers were found to be void, and the Sagi Trust Shares were still held by TPR, then the purchase was to be considered as between TPR and the Trump Group.¹⁹ This was possible because Sagi had purchased control of TPR from his mother, Dalia, with whom he was aligned.²⁰

Therefore, no matter what the outcome of the litigation, the Trump Group hoped to own²¹ two-thirds of the stock of Trans-Resources, including its original 47.15% stake and the 19.43% Sagi Trust Shares.²² The Trump Group would thereby control two-thirds of the

¹⁹ See SPA § 10.

²⁰ The feuding Genger family was split between Genger and Orly, on the one hand, and Dalia and Sagi, on the other.

²¹ Despite its best efforts, the Trump Group could not cover all its bases. Genger advanced two theories at trial why he had the right to purchase the Sagi Trust Shares. See Def's. Post-Tr. Op. Br. 39-42 (Jan. 15, 2010) (arguing that the Trump Group had improperly pledged the Sagi Trust Shares, and that Genger had the right to buy them); Def's. Post-Tr. Ans. Br. 24 n.18 (Feb. 5, 2010) (arguing that the Sagi Trust was not permitted to transfer its shares to the Trump Group, and that Genger could vote these shares). Like many of Genger's other "ever-changing" arguments, I did not directly address these theories at trial. July 2010 Op. *12. Instead, I focused on Genger's two fundamental and most plausible theories: first, that Genger notified the Trump Group of the 2004 transfers, or that the Trump Group ratified these transfers; and second, that the Trump Group took the Sagi Trust Shares subject to a proxy. Because Genger did not bear his evidentiary burden as to those theories, there was no need to consider his alternative arguments. *Id.* at *13. For example, even if the Trump Group had improperly pledged the Sagi Trust Shares in violation of the Stockholders Agreement, once I had found that the transfer of Trans-Resources stock to Genger was void, the immediate conclusion was that Genger was not a Trans-Resources stockholder and had no standing to claim rights under the Stockholders Agreement. Likewise, once I found that the transfer of Trans-Resources stock to Genger was invalid, any rights that Genger might have been able to claim under the Stockholders Agreement to vote the shares transferred from TPR to the Sagi Trust would disappear.

Therefore, it was not necessary for me to address, individually, all of Genger's multifarious arguments, and I focused on the two key theories on which Genger relied for all his other theories. Genger dropped most of these arguments on appeal, perhaps realizing that he had to prevail on one of his two key theories in order to win at all.

²² In the Stock Purchase Agreement, the Trump Group also bargained to buy Genger's and the Orly Trust's pro rata allocations of the Balance Shares, constituting another 1.17% of Trans-

voting interest in Trans-Resources, unless a court found that the irrevocable proxy that Genger claimed to have over the Sagi Trust and Orly Trust Shares remained with those shares after they were sold. Concurrent with executing the Stock Purchase Agreement, the Trump Group entered into a Side Letter Agreement with TPR, giving it an option to purchase the Genger Shares and the Orly Trust Shares, in the event that the 2004 transfers were found to be void and those blocks of shares reverted to TPR.²³

At the same time as filing suit in federal court in New York, the Trump Group sought a judicial determination in this court under 8 *Del. C.* § 225 that it had the right to elect a majority of the Trans-Resources board, on the ground that it held two-thirds of the company's voting stock. Genger sought to dismiss or stay the § 225 action, while simultaneously seeking to intervene in the federal action in order to protect his interests in Trans-Resources' stock.²⁴

The Trump Group and Genger quickly settled the original Delaware lawsuit, stipulating, in September 2008, that the Trump Group had a right to elect a majority of Trans-Resources' board. But the following month, the Trump Group discovered that documents on Trans-Resources' computer systems had been destroyed, in violation of a Status Quo Order I had entered.²⁵ The Trump Group then sought to reopen the § 225 proceeding, and to hold Genger in contempt for despoiling evidence. Genger agreed to

Resources stock, in case the transfers of the Genger and Orly Trust Shares were found to be void. See July 2010 Op. *19 (quoting SPA § 11).

²³ See Pls.' Op. Br. Ex. C (Side Letter Agreement (Aug. 22, 2008)).

²⁴ Def's. Mot. To Dismiss or Stay Ex. C (Sept. 8, 2008) (Mem. of Law in Support of Arie Genger's Mot. To Intervene, No. 08-CV-7140(JFK) (S.D.N.Y. Sept. 5, 2008)).

²⁵ Stip. Status Quo Order (Aug. 29, 2008).

reopen the previous action, and filed a plenary counterclaim, asking this court to declare that he was the “rightful owner” of the 13.99% Genger Shares, and that the Orly Trust was the “rightful owner” of the 19.43% Orly Trust Shares.²⁶ In Genger’s own words, he was willing to “reopen this matter for the litigation of all issues between the parties, including the underlying issue of share ownership.”²⁷ Genger reiterated his request to have this court adjudicate the question of the beneficial ownership of all the Trans-Resources shares held by TPR at least another four times.²⁸ Genger also asked this court to find that he had the right to elect a majority of the Trans-Resources board.²⁹ Furthermore, he asked this court to find that the transfer of shares from the Sagi Trust to the Trump Group was void, or, if it was not void, that he retained a proxy over those shares.³⁰ Genger also successfully moved to stay the federal action—even though he had

²⁶ V. Cross-cl. & Countercl. ¶ 36(c) (Jan. 5, 2009).

²⁷ Mem. in Opp’n to Pls.’ Mot. for a Contempt Order 4 (Oct. 31, 2008).

²⁸ Def’s. Mot. to Reopen Case and for Entry of a Standstill Order 9 (Nov. 10, 2008) (“... Mr. Genger was compelled to bring this Motion to preserve the status quo until this Court can resolve the parties’ dispute over share ownership and voting rights.”); V. Countercl. ¶ 36 (Mar. 30, 2009) (seeking identical relief to that requested in January 5, 2009 counterclaim); Stip. Pre-Tr. Order 6-7 (Dec. 4, 2009) (requesting that this court find that Genger, the Orly Trust, and the Sagi Trust respectively held 13.99%, 19.43%, and 19.43% of Trans-Resources’ stock, and that the Sagi Trust could not transfer its stock to the Trump Group); Def’s. Post-Tr. Op. Br. 9 (Jan. 15, 2010) (asking this court to find that Genger had “economic rights” to 13.99% of Trans-Resources’ stock, that the Orly Trust had “economic rights” to 19.43% of Trans-Resources’ stock, and that Genger had the right to purchase the Sagi Trust shares).

²⁹ V. Cross-cl. & Countercl. ¶ 36(a) (Jan. 5, 2009). In the alternative, Genger asked this court that, if the Stockholders Agreement was found to be unenforceable, he be permitted to elect all members of the board.

³⁰ *Id.* ¶ 36(b).

only just intervened in it—because he represented to the federal court that the Delaware proceedings would “likely resolve” the issues in that case.³¹

C. This Court Finds That The Trump Group Is Entitled To Purchase All Of
Trans-Resources’ Stock

In September 2009, I held a trial on the question of whether Genger had despoiled evidence and violated the status quo order. After trial, I found that he had, and, as part of the remedy for his contempt, I increased the burden of proof that he would have to meet in order to prevail at the trial in the forthcoming § 225 action.³² Thus, if Genger would have been able to prevail on an issue by a preponderance of the evidence without the sanction, he would now need to prove the matter by clear and convincing evidence.³³ I also ruled that, because his conduct had led to me have severe doubts about his credibility, his uncorroborated testimony would not be sufficient for him to prevail on any material factual issue at trial.³⁴

In July 2010, after a trial, I found that Genger had violated the Stockholders Agreement by transferring the Trans-Resources stock out of TPR. First, Genger had violated the Agreement by transferring the Genger Shares to himself without giving the Trump Group written notice. Genger was a “permitted transferee” under the Stockholders Agreement, meaning that he could transfer Trans-Resources stock out of

³¹ *Glenclova Inv. Co. v. Trans-Resources, Inc.*, 874 F. Supp. 2d 292, 297 (S.D.N.Y. 2012) [hereinafter S.D.N.Y. Op.].

³² *T.R. Investors, LLC v. Genger*, 2009 WL 4696062, at *18-19 (Del. Ch. Dec. 9, 2009) [hereinafter Dec. 2009 Op.].

³³ *Id.*

³⁴ *Id.*

TPR to himself, but he still had to give the Trump Group written notice of this transfer.³⁵

Second, Genger had violated the Stockholders Agreement by transferring Trans-Resources stock to the Sagi and Orly Trusts without giving the Trump Group written notice or the right of first refusal, because the trusts were not permitted transferees under the Stockholders Agreement.³⁶

I found that, because Genger had improperly transferred the Trans-Resources stock, these transfers were void and the stock reverted to TPR.³⁷ I then found that the Trump Group had the right to buy the Sagi Trust Shares from TPR, under the Stock Purchase Agreement that the parties had made.³⁸ Together, these determinations were essential to the § 225 action. The issue of whether the Trump Group had the right to buy the Sagi Trust Shares from TPR was directly relevant to the question of who could vote these shares, and thus who controlled Trans-Resources.³⁹ If the Trump Group had bought

³⁵ July 2010 Op. *3.

³⁶ *Id.* at *4.

³⁷ In making this finding, I rejected Genger's two main arguments, which were that the Trump Group had ratified the transfers, and that the Trump Group had had adequate notice of the transfers. *Id.* at *13-18.

³⁸ *Id.* at *19.

³⁹ In its original complaint, the Trump Group sought the right to designate four members of the six-member Trans-Resources board. V. Compl. 5 (Aug. 25, 2008). In its amended complaint, which was operative in the trial, the Trump Group again sought the right to "designate . . . a majority" of the Trans-Resources board, and also sought to determine that TPR, controlled by Sagi, had the right to designate the remaining two members of the board. Am. V. Compl. ¶ 46(i) (Mar. 11, 2009). The Supreme Court observed that the Trump Group initially only sought the right to designate a majority of the Trans-Resources board, not all of the board. Supr. Ct. Op. 200 & n.89. But, the Supreme Court also noted that, after my July 2010 opinion, "all parties agreed that the scope of the Section 225 action should be expanded to encompass which side had the right to designate and elect the two remaining Trans-Resources directors," and held that there was nothing improper with this court deciding which side could designate all six directors. *Id.* at

the Sagi Trust Shares under the Stock Purchase Agreement, as it claimed, it would be able to vote them, because they would no longer be covered by Genger's proxy.⁴⁰ Thus, my July 2010 decision that the Trump Group could vote the Sagi Trust Shares, and had majority control of the Trans-Resources board, rested on three essential grounds: (1) that Genger had transferred the Trans-Resources stock out of TPR in violation of the Stockholders Agreement, (2) that this stock reverted to TPR, and (3) that the Trump Group had the right to buy the improperly transferred stock under the Purchase Agreement.

Importantly, these findings applied to all of the Trans-Resources stock held by TPR, as all the shares were identically situated and were *treated alike by Genger himself*. But, I initially did not grant the Trump Group the right to buy the Genger Shares and Orly Trust Shares.⁴¹ The reason was as follows. I placed weight on the fact that the Trump Group had entered into a Stock Purchase Agreement with TPR, whereby it obtained the right to buy the Sagi Trust Shares, and I thus considered that the Trump Group had "settle[d]" its rights as to TPR.⁴² This outcome appealed to my initial sense of equity, as it seemed to me that allowing the Trump Group to buy all of the Trans-Resources stock

200-01. Thus, the ultimate scope of the § 225 action, as affirmed by the Supreme Court, was the designation of the entire Trans-Resources board.

⁴⁰ July 2010 Op. *20-22 (finding that the proxy did not run with the Sagi Trust Shares after they were transferred out of the Sagi Trust, and therefore that the Trump Group did not buy the shares subject to the irrevocable proxy).

⁴¹ *Id.* at *19. I noted that the Trump Group had bargained for the right to buy the 64% of the Balance Shares at the same time, *i.e.*, those Balance Shares that were part of the Genger Shares and the Orly Trust Shares. *Id.* Because the Balance Shares have been stripped out of the Genger Shares, the Genger Shares no longer represent 13.99% of the share capital of Trans-Resources. Rather, they represent approximately 13.5%.

⁴² *Id.*

was a “disproportionate” remedy.⁴³ I thus ruled that Genger could cure the 2004 transfers to himself by giving the Trump Group notice and signing on to the Stockholders Agreement.⁴⁴ I also noted that the Orly Trust Shares were not before the court, and that adjudicating the shares that were wrongfully transferred to the Orly Trust was not necessary to deciding who controlled Trans-Resources.⁴⁵

But, after my July decision, the parties brought more closely to my attention the Side Letter Agreement, under which the Trump Group had contracted for the right to buy the Genger Shares and the Orly Trust Shares from TPR, just as it had contracted to buy the Sagi Trust Shares from TPR in its “base-covering” provision in the Stock Purchase Agreement.⁴⁶ I also reflected on the fact that my initial instinct as to the equities was wrong, because it rewarded the wrongdoer, Genger, and slighted the contractual expectations of the Trump Group under the Stockholders Agreement.⁴⁷ I therefore issued a new opinion, hewing to the contractual expectations of the parties, and holding that the Trump Group had the right to buy the Genger and Orly Trust Shares.⁴⁸

My August 2010 opinion followed logically from the essential findings of my July opinion. The opinion sought to resolve both the § 225 action, and Genger’s counterclaim: the Trump Group, in the § 225 action, had asked me to declare who had the right to elect the directors of Trans-Resources, and Genger had asked me to decide in his

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *TR Investors, LLC v. Genger*, 2010 WL 3279385 (Del. Ch. Aug. 9, 2010) [hereinafter Aug. 2010 Op.].

⁴⁷ *Id.* at *2.

⁴⁸ *Id.* at *3.

counterclaim who owned the Genger and Orly Trust Shares.⁴⁹ And so, to recap, in resolving these claims, I had reached three essential determinations: (1) that Genger had transferred the Trans-Resources stock out of TPR in violation of the Stockholders Agreement, (2) that this stock reverted to TPR, and (3) that the Trump Group had the right to buy *all* the Trans-Resources stock from TPR.

D. Genger Opens A New Litigation Front In New York Supreme Court

Immediately after I issued this decision, Genger sought a TRO and preliminary injunction in the New York Supreme Court to prevent the transfer of the Genger and Orly Trust Shares to the Trump Group.⁵⁰ That action (the “New York Action”) is still ongoing.⁵¹ Genger obtained the TRO, but moved to withdraw it, and his related motion for a preliminary injunction, after TPR and Sagi agreed to be bound by this court’s existing Status Quo Order that required the Trump Group to give Genger five business days’ notice of certain business transactions.⁵² Shortly thereafter, as part of my final order in the Delaware action, I issued an injunction against most further actions in New

⁴⁹ *Id.* at *2; *see also* Am. Compl. 17 (Mar. 11, 2009).

⁵⁰ *See* Order To Show Cause & TRO, *Genger v. Genger*, Index No. 651089/2010 (N.Y. Sup. Ct. July 25, 2010). This case is referred to as the “N.Y. Action.” The affidavits in support of this action were dated on the same day as this court’s July 2010 decision, and the summons was dated July 20, three days *before* the July 2010 decision, although it was filed later.

⁵¹ Two other actions relating to the Trans-Resources shares are ongoing in New York Supreme Court, but are not relevant here. The first action was originally filed by Orly against Dalia, Sagi, and TPR in 2009 for allegedly looting the Orly Trust. *See* V. Compl., *Genger v. Genger*, Index No. 109749/2009 (N.Y. Sup. Ct. July 8, 2009). The second action was originally filed by Dalia, in her individual capacity and as the trustee for the Orly Trust, against Arie, for allegedly violating their divorce agreement by failing to transfer the Trans-Resources shares to the Orly Trust. *See* Compl., *Genger v. Genger*, Index No. 113862/2010 (N.Y. Sup. Ct. Oct. 21, 2010).

⁵² Order, N.Y. Action (Aug. 4, 2010); *see* Letter to the Court from Jessica Zeldin, at 2 (Aug. 2, 2010); Second Am. Status Quo Order ¶ 2 (Dec. 30, 2008).

York state court while Genger appealed my decisions to the Delaware Supreme Court.⁵³

That order also provided that if the Trump Group did purchase the Genger and Orly Trust Shares from TPR, Genger was permitted to seek an order that the money for these shares should be placed in escrow.⁵⁴ In addition, I entered a Status Quo Order Pending Appeal, under which the Trump Group was required to give Genger ten days' notice of certain business transactions.⁵⁵

The Trump Group and TPR entered into a First Escrow Agreement in September 2010, providing that \$5.9 million of the proceeds from the Genger Shares—*i.e.*, all the proceeds apart from \$1.5 million—would be held in escrow, and would be released after the Delaware Supreme Court affirmed the Final Judgment Order, or after Genger's time to appeal expired.⁵⁶ The remaining \$1.5 million would be paid directly from the Trump Group to TPR.⁵⁷ After the Trump Group gave Genger notice of this proposed transfer, as required under the Status Quo Order Pending Appeal, Genger sought and obtained a TRO in New York Supreme Court requiring that *all* of the sale proceeds from the Genger Shares should be placed in escrow.⁵⁸ In November, the New York court extended the TRO, pending the decision on Genger's application for a preliminary injunction.⁵⁹ In

⁵³ Final J. Order ¶ 19 (Aug. 17, 2010).

⁵⁴ *Id.*

⁵⁵ Status Quo Order Pending Appeal (Aug. 17, 2010).

⁵⁶ TPR Op. Br. Ex. B. (Escrow Agreement (Sept. 2010)) [hereinafter First Escrow Agreement]. The Trump Group, TPR, the Orly Trust, and Orly also entered into an escrow agreement to hold the money for the Orly Trust Shares. The Orly Trust Shares are not before the court in this action.

⁵⁷ *Id.*

⁵⁸ Order To Show Cause & TRO, N.Y. Action (Oct. 5, 2010).

⁵⁹ Order, N.Y. Action (Nov. 12, 2010).

January 2011, the Trump Group and TPR entered into a Second Escrow Agreement, providing that the remaining \$1.5 million would also be held in escrow.⁶⁰ In February 2011, the Trump Group purchased the Genger Shares from TPR, and the proceeds were placed in escrow according to the First and Second Escrow Agreements.⁶¹ At the same time, the New York Supreme Court issued a preliminary injunction providing that TPR and Sagi could not take or use any of the proceeds from the Genger Shares “pending a determination by the Delaware Supreme Court of the Delaware Action and/or a resolution of this action.”⁶²

E. The Delaware Supreme Court Upholds The Finding That Genger Improperly Transferred TPR’s Trans-Resources Stock, And That The Stock Reverted To TPR

Genger appealed all three of my decisions in his case to our Supreme Court. These decisions were my December 2009 opinion, where I found that Genger had despoiled evidence and was guilty of contempt; my July 2010 opinion, where I found that the Trump Group had the right to purchase the Sagi Trust Shares; and my August 2010 opinion, where I found that the Trump Group had the right to purchase all the Trans-Resources stock transferred out of TPR.

The December 2009 Opinion. Genger appealed this opinion on the grounds that there was no factual or legal basis for holding him in contempt, and that the \$3.2 million I

⁶⁰ Pls.’ Br. in Opp’n Ex. 2 (Escrow Agreement (Jan. 2011)) [hereinafter Second Escrow Agreement].

⁶¹ Hirsch Aff. ¶¶ 4-5, 7 (Dec. 12, 2012).

⁶² Decision & Order, N.Y. Action, at 13 (Feb. 17, 2011).

awarded against him in fees was disproportionate and an abuse of discretion.⁶³ The Supreme Court rejected both of these contentions, and affirmed the decision in full.⁶⁴

The July 2010 Opinion. Genger appealed this opinion on two grounds. First, he argued that the Trump Group had ratified the 2004 transfers.⁶⁵ Second, he argued that the Sagi Trust Shares were still covered by his proxy.⁶⁶ The Supreme Court rejected both of these arguments.⁶⁷ The court wrote: “[W]e uphold the judgment of the Court of Chancery insofar as it adjudicates the merits of the Trump Group’s Section 225 claims.”⁶⁸ Because I had decided that the Trump Group had the right to vote the Sagi Trust Shares, the Supreme Court necessarily affirmed the finding that the Trump Group had the right to

⁶³ Corrected Appellant’s Op. Br. 29-35, No. 592, 2010 (Del. Nov. 16, 2010); Appellant’s Reply Br. 16-20, No. 592, 2010 (Del. Dec. 23, 2010).

⁶⁴ Supr. Ct. Op. 191-94. The court also noted that Genger was explicitly barred from arguing that the amount of the attorneys’ fee award against him was disproportionate. As the Supreme Court observed, Genger had agreed in the Final Judgment Order that he would not challenge the attorneys’ fee award on these grounds. Instead, he would only challenge the fee award on the ground that it was “improper to award *any* sanction” for the contempt finding against him. *Id.* at 194 (emphasis added) (quoting Final J. Order ¶ 16 (Aug. 17, 2010)). Therefore, the Supreme Court reviewed the fee award only for “plain error,” and found none. *Id.*

⁶⁵ Corrected Appellant’s Op. Br. 17-21, No. 592, 2010 (Del. Nov. 16, 2010); Appellant’s Reply Br. 2-7, No. 592, 2010 (Del. Dec. 23, 2010).

⁶⁶ Corrected Appellant’s Op. Br. 21-24, No. 592, 2010 (Del. Nov. 16, 2010); Appellant’s Reply Br. 8-11, No. 592, 2010 (Del. Dec. 23, 2010).

⁶⁷ Supr. Ct. Op. 194. Genger challenged each of the “three reasons” why I held his proxy did not cover the Sagi Trust Shares, namely (i) the proxy did not provide that it was to run with the shares if the shares were sold, (ii) public policy considerations prevented the separation of voting from control, and (iii) the proxy was not irrevocable under New York law. *Id.* at 196-97. The Supreme Court rejected his arguments as to the first point, noting that the plain language of the proxy held that it did not run with the shares after sale. *Id.* at 197. As to the second point, the Supreme Court eschewed arguments of public policy, simply noting that the proxy did not conform to the requirements of New York law. *Id.* And, as to the third point, the court noted that Genger, by claiming that the proxy did conform to New York requirements, was improperly raising an argument on appeal that was never “fully and fairly presented to the trial court.” *Id.* at 197. Therefore, the Supreme Court did not consider Genger’s new argument, although it noted that it was “unsupported by the record.” *Id.*

⁶⁸ *Id.* at 198.

buy the Sagi Trust Shares. And, because it did not disturb the finding that the Trump Group did not ratify the transfer of the Sagi Trust Shares out of TPR, the Supreme Court also affirmed the essential determinations that the Sagi Trust shares were improperly transferred, and that they reverted to TPR.

The August 2010 Opinion. Genger appealed this opinion on two grounds. Genger claimed that, because he was a permitted transferee under the Stockholders Agreement, the transfer of shares to him should not have been deemed void, even if the transfers to the Sagi Trust and the Orly Trust were void.⁶⁹ And, Genger claimed that this court “exceeded its authority” in adjudicating the ownership of the Genger and Orly Trust Shares.⁷⁰ *As the Supreme Court noted, this second argument was an “about-face,” because Genger had asked for this very question to be decided in his plenary counterclaim.*⁷¹

The Supreme Court rejected Genger’s claim that, because he was a permitted transferee, the transfer of shares to him was not void.⁷² But, it agreed that this court “exceeded its powers” as to the adjudication of the ownership of the Genger and Orly Trust Shares.⁷³ The court noted that a § 225 proceeding is an *in rem*, not a plenary, action, and “[o]nly in a plenary proceeding before a court that has *in personam*

⁶⁹ Corrected Appellant’s Op. Br. 28, No. 592, 2010 (Del. Nov. 16, 2010); Appellant’s Reply Br. 15, No. 592, 2010 (Del. Dec. 23, 2010).

⁷⁰ Corrected Appellant’s Op. Br. 24, No. 592, 2010 (Del. Nov. 16, 2010); Appellant’s Reply Br. 12-14, No. 592, 2010 (Del. Dec. 23, 2010).

⁷¹ Supr. Ct. Op. 199.

⁷² *Id.* at 201 (noting that this court’s determination that “that TPR was the record owner [of] and entitled to vote” the Genger Shares “pose[d] no problem”).

⁷³ *Id.*

jurisdiction over the litigants may the court adjudicate the litigants' property interest in disputed corporate shares."⁷⁴ The Supreme Court held that this court had lacked personal jurisdiction over two indispensable parties. First, TPR was absent from the action, but, because it had an interest in the Genger and Orly Trust Shares, its presence was required before the ownership of these shares could be determined.⁷⁵ Second, the Orly Trust was also absent, and because it had an interest in the ownership of the Orly Trust Shares, its presence was also required.⁷⁶ Therefore, the Supreme Court reversed my August 2010 opinion to the extent that these two indispensable parties were absent.⁷⁷

But, the Supreme Court did not fully reject my August 2010 opinion. The Supreme Court explicitly affirmed it insofar as it found that TPR was entitled to vote the Genger and Orly Trust Shares. The court held:

⁷⁴ *Id.*

⁷⁵ *Id.* at 202.

⁷⁶ *Id.* at 202-03.

⁷⁷ The Supreme Court's opinion is, at first blush, confusing, but becomes clearer in light of the position taken by the new counsel Genger retained for his appeal. Genger's counsel only argued that an indispensable party was missing as to the adjudication of ownership of the Genger Shares and the Orly Trust Shares. Corrected Appellant's Op. Br. 24-27, No. 592, 2010 (Del. Nov. 16, 2010). The Supreme Court agreed, and found that TPR and the Orly Trust should have been joined to the action. But even though the Supreme Court found that TPR was an indispensable party, the court did *not* reverse my determination of ownership of the Sagi Trust Shares. This is odd, because, if TPR was an indispensable party as to the sale of the Genger and Orly Trust Shares, surely it was an indispensable party as to the sale of the Sagi Trust Shares also.

The answer to this apparent inconsistency lies, I believe, in the fact that Genger's counsel never sought to have my determination of the ultimate ownership of the Sagi Trust Shares reversed on appeal. What Genger wanted was for the Supreme Court to decide that he retained a proxy over the Sagi Trust Shares, so that he could still vote them. *Id.* at 21-23. Therefore, the Supreme Court was faced with Genger's inconsistent argument that this court could decide the ownership of the Sagi Trust Shares, even though TPR was absent, but it could not decide the ownership of the Genger and Orly Trust Shares.

If the only new issue decided [in the August 2010 opinion] was who constituted the lawful record owners of the Genger and Orly Trust shares, the Court of Chancery's Side Letter Opinion and subsequent Final Judgment Order would pose no problem. The trial court determined that TPR was the record owner and entitled to vote.⁷⁸

The Supreme Court thus explicitly left undisturbed the findings in my July and August 2010 opinions that the Genger Shares and the Orly Trust Shares had been improperly transferred, and that they reverted back to TPR. Thus, the Supreme Court treated these two blocks of shares in an identical manner to the Sagi Trust Shares. The Supreme Court also noted that it was necessary to make these findings in order to decide who had the right to vote the Genger and Orly Trust Shares, which the § 225 action was intended to resolve.⁷⁹

The Supreme Court observed that there was a logical connection between the shares reverting to TPR, and the Trump Group having the right to buy them. The court said:

If the Trump Group was . . . entitled [to buy the Genger and Orly Trust Shares], then as a legal matter those shares would continue to be held by TPR, and Genger and the Orly Trust would have no Trans-Resources shares to vote to elect the remaining two directors. If, however, the Trump Group had no contractual right to purchase the Genger and the Orly Trust Shares, then under the Stockholders Agreement, Genger would be entitled to designate the remaining two Trans-Resources directors.⁸⁰

⁷⁸ Supr. Ct. Op. 201.

⁷⁹ As I have said, the Supreme Court observed that the Trump Group had requested, in the § 225 action, a finding that it was entitled to elect the majority of the Trans-Resources board, *i.e.*, four directors, not all six. *Id.* at 200 n.89. But, the Supreme Court held that the action could also determine who had the right to elect the other two directors. *Id.* at 200.

⁸⁰ *Id.* This point was also noted by the federal district court in New York:

All potential claimants acknowledge that if Arie and the Orly Trust are deemed to be the beneficial owners of the Arie Shares and Orly Trust Shares, then the Trump Group's purchase of shares from TPR would be rescinded and the interpleaded

The Supreme Court rejected Genger's claim that my finding that the Trump Group could purchase the Genger and Orly Trust Shares was not relevant to the § 225 action:

Genger contends that adjudicating the validity of the 2004 Transfers under the Side Letter Agreement exceeded the Court of Chancery's jurisdiction, because the *Trump Group's right to buy, and TPR's right to sell*, the Genger Shares and the Orly Trust Shares were "collateral" issues, *i.e.*, unnecessary to resolve the merits of the Section 225 claims. We . . . reject [this contention].⁸¹

Therefore, in affirming my July 2010 opinion, which held that the Trump Group owned and could vote the Sagi Trust Shares, and in affirming my August 2010 opinion insofar as it held that TPR could vote the Genger and Orly Trust Shares, the Supreme Court explicitly and implicitly affirmed the three essential grounds on which my decisions had rested: (1) that Genger had transferred the Trans-Resources stock out of TPR in violation of the Stockholders Agreement, (2) that this stock reverted to TPR, and (3) that the Trump Group had the right to buy this stock from TPR.

After the Supreme Court's ruling, the parties negotiated, and I entered, a Revised Final Judgment Order, which provided that the Trump Group was the owner of 67.75% of Trans-Resources' stock, and that TPR could vote any shares that the Trump Group did not own.⁸² The Revised Final Judgment Order explicitly memorialized the three determinations that were essential to my decisions:

funds would go back to the Trump Group. But, if the 2004 transfer of shares to Arie and the Orly Trust is found to be invalid, then TPR had the right to sell the shares to the Trump Group

S.D.N.Y. Op. 303.

⁸¹ Supr. Ct. Op. 199 (emphasis added).

⁸² Rev. Final J. Order ¶¶ 7-8 (Aug. 19, 2011).

11. All of the transfers of shares of the authorized and issued stock of Trans-Resources that Arie Genger purported to cause TPR to make in 2004 (to himself, the Sagi Genger 1993 Trust, and the Orly Genger 1993 Trust) were in violation of the Stockholders Agreement.

12. As a result, the transfers were void, the purportedly transferred shares continued at all times to be owned of record by TPR, and Investors and Glenclova had the right under Section 3.2 of the Stockholders Agreement to buy all of the shares purportedly transferred by TPR.⁸³

F. The Trump Group Files A New Complaint In This Court, And The Federal Court Stays Its Action

Four days after the Supreme Court's decision, the Trump Group filed a new complaint in this court, naming Genger and TPR as defendants, in order to cure the jurisdictional defect that had led to the Supreme Court vacating my decision as to the beneficial ownership of the Genger Shares.⁸⁴ The Trump Group then moved for summary judgment against Genger.⁸⁵ That motion is before the court today.

In August 2011, Genger filed an order to show cause against Sagi in New York Supreme Court seeking to extend the preliminary injunction covering the use of the escrowed funds granted by that court in February 2011.⁸⁶ The New York Supreme Court entered the order,⁸⁷ and in December 2011 again issued an injunction providing that the escrowed funds should not be disturbed, "pending the determination by a court of competent jurisdiction the beneficial ownership of such shares."⁸⁸ Under the terms of the

⁸³ *Id.* ¶¶ 11-12.

⁸⁴ V. Compl., C.A. No. 6697-CS (July 22, 2011).

⁸⁵ Pls.' Mot. for Summary J., C.A. No. 6697-CS (Sept. 2, 2011).

⁸⁶ Order To Show Cause & TRO, N.Y. Action (Aug. 9, 2011).

⁸⁷ Order To Show Cause, N.Y. Action (Aug. 19, 2011).

⁸⁸ Decision & Order, N.Y. Action, at 14 (Dec. 28, 2011)) [hereinafter N.Y. 2011 Op.].

New York court's new injunction, the Trump Group was required to give Genger "ten business days' notice of future transactions that may impact" the Genger Shares.⁸⁹

In an effort to try to reduce the multiforum morass in which the parties were stuck, I encouraged the parties to allow the United States District Court for the Southern District of New York a chance to decide the original case that had been filed before it.⁹⁰ This was the forum first invoked by the Trump Group, and in the state where Genger apparently wished to litigate, having lost his previous enthusiasm to have this court decide his claim. Our Supreme Court also suggested that this would be a suitable forum for the dispute, and the New York Supreme Court observed that the federal court should decide where the action would go forward.⁹¹

In June 2012, the federal district court issued a decision on the Trump Group's original claim, and on two related interpleader actions filed by the agents for the escrowed funds for the Genger and Orly Trust Shares.⁹² The court noted that Genger's attempt to relitigate the question of share ownership in New York state court was "little more than a collateral attack on the Delaware Supreme Court ruling."⁹³ And, it observed that Genger's position was fundamentally inequitable:

[E]ven though Arie is the party who made false representations in [his divorce settlement], his reformation claim does not seek to right that wrong.

⁸⁹ *Id.* at 15. About this time, in October 2011, Dalia Genger filed suit against the Trump Group in this court, seeking a declaration that the Orly Trust was the beneficial owner of the Orly Trust shares. V. Compl., *Genger v. TR Investors, LLC*, C.A. No. 6906-CS (Oct. 4, 2011). Orly obtained a TRO and injunction against this action. *See* Order, N.Y. Action (Apr. 9, 2012).

⁹⁰ *See* Tr. of Telephone Conf. 25, C.A. No. 6697-CS (Nov. 10, 2011).

⁹¹ Supr. Ct. Op. 203 n.98; Decision & Order, N.Y. Action, at 7, 14 (Dec. 28, 2011).

⁹² *See* S.D.N.Y. Op. 298-99.

⁹³ *Id.* at 297.

Instead, he wants to change the terms of the agreement in a manner designed to undo the Delaware Chancery Court's finding of liability against him, thereby allowing him to avoid the consequences of his own breach of the 2001 Stockholders Agreement—the Trump Group's right to purchase those invalidly transferred shares.⁹⁴

The court dismissed the interpleader actions.⁹⁵ The court also resolved to stay the original action in favor of proceedings pending in the Delaware and New York state courts, while maintaining jurisdiction.⁹⁶

G. The New York Supreme Court Rejects Genger's Collateral Attacks On The Delaware Rulings, And The Trump Group's Action Here Continues

With the federal action stayed, the state court actions continued here and in New York. In January 2013, the New York Supreme Court issued a ruling on the defendants' motion to dismiss the complaint that Genger and Orly filed in the New York Action.⁹⁷ In that action, Genger advanced various arguments to recover ownership of Trans-Resources, which included recycled versions of arguments he had made, and failed to prevail upon, in the earlier Delaware case.⁹⁸ Genger sought to reform his divorce

⁹⁴ *Id.* at 311.

⁹⁵ *Id.* at 314.

⁹⁶ *Id.*

⁹⁷ Am. Decision & Order, N.Y. Action (Jan. 3, 2013) (appeal and cross-appeal pending) [hereinafter N.Y. 2013 Op.]. The first complaint in the action was dated July 25, 2010, immediately after this court handed down its July 2010 decision, and the operative complaint was filed on September 20, 2011. Third Am. & Suppl. Compl., N.Y. Action (Sept. 20, 2011). The defendants were Trans-Resources, Jules Trump, Eddie Trump, Mark Hirsch (an officer of Trans-Resources), the Trump Group, TPR, Dalia, Sagi, the Sagi Trust, and Rochelle Fang (the trustee for the Sagi Trust).

⁹⁸ For example, Genger argued vigorously in New York that he was now entitled to reform his divorce agreement in such a way that he would still control the Trans-Resources stock transferred from TPR. *See, e.g.,* Genger's Opp'n to the Trump Group Defs.' Mot. To Dismiss, N.Y. Action, at 17-19 (Nov. 22, 2011). Genger pointed to a provision of his divorce agreement that stated that, if the agreement was held invalid, "either party may seek reformation of the

agreement so that he could reassert control over the Trans-Resources stock that TPR had held.⁹⁹ Genger also sought to have TPR's 52.85% stake in Trans-Resources placed in a constructive trust for his benefit and for the agreement granting control of TPR to Dalia to be rescinded,¹⁰⁰ and alleged that the defendants had been unjustly enriched.¹⁰¹ Genger moved for an injunction preventing the defendants from transferring or voting all of the Trans-Resources stock held by TPR, including the Sagi Trust Shares,¹⁰² Genger also asserted various claims seeking monetary relief. These included claims for breach of contract, tortious interference with contract, aiding and abetting tortious interference with contract, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty.¹⁰³

The New York court dismissed the complaint in large part. The court gave preclusive effect to this court's rulings, and rejected Genger's claim that the decisions of this court and of the Delaware Supreme Court in the prior litigation were not binding on

affected provision." MSA art. XVI. Genger had argued this provision of his divorce agreement in this court, without success. *See* Def's. Post-Tr. Op. Br. 33-34 (Jan. 15, 2010).

⁹⁹ Third Am. & Suppl. Compl., N.Y. Action, ¶¶ 174-89 (Sept. 20, 2011).

¹⁰⁰ *Id.* ¶¶ 190-207, 222-26.

¹⁰¹ *Id.* ¶ 221. Genger alleged that he had no adequate remedy at law for the unjust enrichment.

¹⁰² *Id.* ¶¶ 190-207, 227-31, 257-64.

¹⁰³ *Id.* ¶¶ 208-19, 221, 232-56. Two allegations underlay Genger's claims for monetary relief. The first was that the Trump Group had paid too low a price for Trans-Resources, because it claimed the right to buy the shares at 2004 prices. *Id.* ¶ 105. The second related to the allocation of the price that the Trump Group had paid. *Id.* ¶ 121. Under the Side Letter Agreement, the Trump Group contracted to buy the Genger Shares and the Orly Trust Shares "based upon an aggregate value for all the issued and outstanding shares of Common Stock of the Company of \$55,000,000 (as determined in the arbitration proceedings between Arie Genger and Dalia Genger . . .)." Side Letter Agreement 1-2. But, the price paid for the Sagi Trust Shares was \$26,715,416—valuing Trans-Resources at approximately \$137 million. SPA § 2(a). In the Delaware action, the Trump Group argued that it had paid the Sagi Trust a control premium. *See* Tr. of Office Conference 12:14-17 (July 29, 2010).

him.¹⁰⁴ Like the federal court, the New York Supreme Court held that to reform Genger's divorce agreement in such a way that Genger controlled, and could vote, TPR's 52.85% Trans-Resources stock would constitute a collateral attack on the Delaware Supreme Court's ruling.¹⁰⁵ The court refused to rescind the transfer of TPR to Dalia.¹⁰⁶ And, the court refused to grant Genger an injunction preventing the Trump Group from transferring or voting the stock it had received from TPR, because this too would constitute a collateral attack on the rulings of the Delaware courts.¹⁰⁷

The court also dismissed Genger's claims for breach of contract, tortious interference with contract, and aiding and abetting tortious interference with contract.¹⁰⁸ But, the court did not dismiss Genger's claims against the Trump Group, TPR, and Sagi for unjust enrichment, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty.¹⁰⁹ Like this court, the New York Supreme Court acknowledged that Genger might be able to object to the way in which TPR had divided the funds it had received for TPR's Trans-Resources stock.¹¹⁰ That is, the New York Supreme Court acknowledged that Genger might have a dollar fight within the Genger family (to include

¹⁰⁴ N.Y. 2013 Op. 10-14.

¹⁰⁵ *Id.* at 15, 24-25, 32-33.

¹⁰⁶ *Id.* at 34-35.

¹⁰⁷ *Id.* at 19-20, 31.

¹⁰⁸ *Id.* at 22-24, 29-31.

¹⁰⁹ *Id.* at 19 (finding that Genger had adequately pled a claim of unjust enrichment against the Trump Group); *id.* at 21 (finding that Genger had adequately pled a claim of breach of fiduciary duty against the Trump Group); *id.* at 22 (finding that Genger had adequately pled a claim of breach of fiduciary duty against Sagi, and a claim that the Trump Group had aided and abetted this breach of fiduciary duty); *id.* at 25, 27 (finding that Genger had adequately pled a claim of unjust enrichment against TPR and Sagi); *id.* at 28-29 (finding that Genger had adequately pled a claim of breach of fiduciary duty, and aiding and abetting breach of fiduciary duty, against Sagi).

¹¹⁰ *Id.* at 18-19; *id.* at 25-26 (quoting Aug. 2010 Op. *3).

TPR, which his son Sagi controlled), but that this did not allow him to impede the Trump Group's ownership, and control, of the Sagi Trust Shares, and hence of Trans-Resources.

This court also resumed proceedings after the federal action was stayed, and, in September 2012, heard argument on Genger's motion to dismiss the action, or to stay it in favor of the action in New York.¹¹¹ The motion to dismiss or stay was denied.¹¹² This court also denied Genger's application for certification of the decision to our Supreme Court,¹¹³ and the Supreme Court denied interlocutory review.¹¹⁴ This is the decision, therefore, on the Trump Group's motion for summary judgment against Genger. It is also a decision on TPR's cross-motion for summary judgment to obtain the escrowed money paid for the Genger Shares.

III. The Trump Group Is Entitled To Summary Judgment On Its Purchase Of The Genger Shares

In the analysis that follows, I explain why the Trump Group is entitled to summary judgment. Under the doctrine of issue preclusion, Genger is not permitted to relitigate the issue of whether the Trump Group had the right to purchase TPR's holding of Trans-Resources stock. The fact that Genger was held to a higher burden of proof in the previous litigation because of his own misconduct does not affect the issue-preclusive

¹¹¹ Genger sought to dismiss the action on the ground that this court had no jurisdiction over him, that service of process on him was ineffective, and that the court had no subject matter jurisdiction over the case. Def's. Br. in Support of Renewed Mot. To Dismiss or Stay, C.A. No. 6697-CS (July 9, 2012).

¹¹² Order, C.A. No. 6697-CS (Sept. 10, 2012).

¹¹³ Order, C.A. No. 6697-CS (Oct. 5, 2012).

¹¹⁴ *Genger v. TR Investors, LLC*, 54 A.3d 256 (Del. 2012) (TABLE).

the nature of the previous action. Therefore, the Trump Group has the right to purchase the Genger Shares.

The only remaining question is whether the Trump Group has purchased the shares from TPR. Under Court of Chancery Rule 56(e), a party may support its motion for summary judgment with an affidavit “made on personal knowledge” and “set[ting] forth such facts as would be admissible in evidence.”¹¹⁵ The Trump Group has submitted such an affidavit and other undisputed record evidence. Genger has not rebutted these submissions. Therefore, I grant summary judgment to the Trump Group.

Nevertheless, counsel for Genger has submitted an affidavit under Court of Chancery Rule 56(f), testifying that there are issues of fact that require discovery.¹¹⁶ Genger has also put forth new arguments in his briefing. It is not necessary for me to consider this affidavit or these arguments, because the determinations of the previous action have preclusive effect. Genger himself acknowledges that if the rulings of the previous action are given preclusive effect, the Trump Group is entitled to summary judgment.¹¹⁷ But, in the interest of completeness, I consider Genger’s arguments anyway, and explain why they do not defeat summary judgment.

¹¹⁵ Del. Ct. Ch. R. 56(e).

¹¹⁶ *Id.* 56(f) (“Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party’s opposition, the Court may refuse the application for judgment . . .”).

¹¹⁷ Genger Br. in Opp’n 25 (“The Trumps Are Not Entitled To Summary Judgment Absent Preclusion”).

A. The Trump Group Has The Right To Buy The Genger Shares

1. The Doctrine Of Issue Preclusion Prevents Genger From Challenging The Findings Of The Previous Action¹¹⁸

The doctrine of issue preclusion provides that “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.”¹¹⁹ The Supreme Court has adopted a four-prong test for issue preclusion. Issue preclusion applies if “(1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) that issue [was] actually litigated; (3) [the issue was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment.”¹²⁰

¹¹⁸ The Trump Group has also suggested that it should also be able to prevail under the related doctrine of claim preclusion. The doctrine of claim preclusion provides that “a judgment, once rendered, [is] the full measure of relief to be accorded between the same parties on the same ‘claim’ or ‘cause of action.’” Charles Alan Wright et al., 18 *Federal Practice and Procedure* § 4402 (2d ed., updated 2012) (citation omitted).

Here, the doctrine of claim preclusion is not applicable. Because two indispensable parties were missing from the previous action—TPR and the Orly Trust—our Supreme Court held that its decision was not the “full measure of relief” between the Trump Group and Genger as to the block in question in this case, the Genger Shares. Supr. Ct. Op. 202-03. Instead, the Supreme Court suggested the Trump Group obtain relief in a court that had jurisdiction over all the relevant parties to determine the beneficial ownership of the shares. *Id.* at 203 n.98. Thus, the Supreme Court held that the prior action did not have the effect of barring a future action to determine the beneficial ownership of the Genger Shares and the Orly Trust Shares. The Revised Final Judgment Order, although it stated that it was a “final judgment,” left open the question of the beneficial ownership of the Genger and Orly Trust shares. Rev. Final J. Order ¶¶ 15-16.

¹¹⁹ Restatement (Second) of Judgments § 27 (1982).

¹²⁰ *Acierno v. New Castle Cnty.*, 679 A.2d 455, 459 (Del. 1996) (quoting *Graham v. IRS*, 973 F.2d 1089, 1097 (3d Cir. 1992)); see also *Technicorp Int’l II, Inc. v. Johnston*, 1997 WL 538671, at *4 (Del. Ch. Aug. 25, 1997) (applying the same test to determine if issue preclusive effect was to be given to determinations made in a § 225 action).

The three essential findings that underpin the Trump Group's motion—that the 2004 transfers were invalid, that the Trans-Resources shares reverted to TPR, and that the Trump Group had the right to buy these shares—are all subject to issue preclusion under the Supreme Court's test. As to the first prong of the test, deciding whether the Trump Group could vote the Sagi Trust Shares, which the Trump Group asked me to find in its complaint, necessarily involved the questions of whether the 2004 transfers were valid, whether the Sagi Trust Shares reverted to TPR, and whether the Trump Group had had the right to purchase the Sagi Trust Shares.¹²¹ And, deciding that TPR had the right to vote the Genger Shares and Orly Trust Shares, which was the aspect of my August 2010 opinion that “pose[d] no problem,” also involved the exact same questions.¹²² Thus, the first prong of the test is satisfied.

As to the second prong of the issue preclusion test, there is no question that these issues were litigated. Much of the trial testimony revolved around the question whether the 2004 transfers were valid, or whether they had later been ratified by the Trump Group.¹²³ In their post-trial argument and briefing, counsel for each side focused on whether the shares reverted to TPR, and, if so, whether the Trump Group had the right to

¹²¹ See Supr. Ct. Op. 194-97 (upholding this court's finding that the 2004 transfers were invalid); *id.* at 198 (upholding the judgment of this court “insofar as it adjudicate[d] the merits of the Trump Group's Section 225 claims”).

¹²² *Id.* at 201.

¹²³ In fact, *all* witnesses at trial testified on the supposed notice, validity, or ratification of the 2004 transfers, some at great length. See, e.g., Tr. 74-78 (J. Trump – Direct), 281 (Hirsch – Cross), 476-77 (E. Trump – Direct), 555-57 (S. Genger – Direct), 571 (Small – Direct), 626-27 (Dowd – Direct), 785-87 (O. Genger – Direct), 855-60 (A. Genger – Direct), 970-1029 (Lentz – Direct) (Dec. 15-17, 2009).

buy them.¹²⁴ Between my July 2010 and August 2010 opinions, counsel renewed these arguments, with a particular focus on the Genger and Orly Trust Shares.¹²⁵ Genger's lawyers in particular produced a plethora of legal arguments why Genger should retain control over Trans-Resources, including arguments on appeal by his new counsel (retained post-trial) that directly contradicted the arguments made earlier by his trial counsel.¹²⁶ The New York Supreme Court noted that Genger had a "full and fair"

¹²⁴ *E.g.*, Def's. Post-Tr. Op. Br. 15-38 (Jan. 15, 2010); Pls.' Post-Tr. Op. Br. 32-46 (Jan. 15, 2010).

¹²⁵ *See, e.g.*, Letter to the Court from Thomas J. Allingham II, Esq. (Aug. 2, 2010); Letter to the Court from Donald J. Wolfe, Jr., Esq. (Aug. 4, 2010). Although the parties focused more on the Trump Group's right to buy the Genger and Orly Trust Shares after my July 2010 opinion, the Side Letter Agreement, under which the Trump Group contracted to buy these shares from TPR, was the subject of briefing, argument, testimony, and even the pre-trial order. *E.g.*, Pls.' Post-Tr. Op. Br. 29-30 (Jan. 15, 2010); Def's. Pre-Tr. Op. Br. 22 n.10 (Dec. 3, 2009); Post-Tr. Oral Arg. 120-22 (Apr. 26, 2010); Tr. 401-02 (Hirsch – Cross) (Dec. 16, 2009); Stip. Pre-Tr. Order 9-10 (Dec. 4, 2009).

¹²⁶ At trial, Genger advanced "every conceivable exculpatory theory that ever crossed his lawyers' inventive minds." July 2010 Op. *12. I now summarize his post-trial arguments, many of which I have mentioned elsewhere in this opinion. First, Genger claimed that the Trump Group ratified the 2004 transfers, and the irrevocable proxies, by not objecting to Genger's voting the TPR Shares in a Trans-Resources stockholders meeting on June 25, 2008, twelve days after the Trump Group learned of the 2004 transfers. Def's. Post-Tr. Op. Br. 15-23 (Jan. 15, 2010). Second, Genger claimed that, by purchasing the Sagi Trust Shares from the Sagi Trust, the Trump Group again ratified the 2004 transfers. *Id.* at 23-26. Third, Genger argued that, in any case, the Trump Group had known about the 2004 transfers years before, and had ratified them, or acquiesced in them, in 2005. *Id.* at 26-30. Fourth, Genger claimed that the Trump Group's claims were barred under the statute of limitations, or laches. *Id.* at 30-32. Fifth, Genger claimed that undoing the 2004 transfers would require his divorce settlement to be reformed. *Id.* at 32-39. Sixth, Genger argued that the Trump Group itself violated the Stockholders Agreement when it purchased the Sagi Trust Shares, because it pledged these shares to a lender in return for funding. *Id.* at 39-42. Sixth, Genger argued that his irrevocable proxies over the Sagi Trust Shares and the Orly Trust Shares were valid and effective, and that even if they were deemed ineffective, he still controlled the Sagi and Orly Trust Shares through a backup voting trust agreement. *Id.* at 42-49.

In addition to his main arguments, Genger advanced various theories based on the allegedly inequitable nature of the Trump Group's conduct, claiming that Orly would be disinherited, and that the Trump Group had deliberately engineered a means of obtaining Trans-Resources on the

opportunity to litigate these issues.¹²⁷ A rereading of the briefs filed by Genger suggests that the word “fulsome” would also be apt.

As to the third prong of the test, the three issues were decided in a “final and valid judgment.” As I have explained, the Supreme Court upheld this court’s determination that the Trump Group was entitled to purchase the Sagi Trust Shares, because the transfers of those shares were invalid and they reverted to TPR.¹²⁸ And, the Supreme Court also found that the Genger Shares and the Orly Trust Shares were invalidly transferred and reverted to TPR. Even though the court only ruled that TPR had the right to vote these shares, it noted that, if the shares reverted to TPR, the Trump Group had the

cheap. *See id.* at 5, 7. Genger also suggested that the transfer of the Genger Shares should not be void because the Trump Group had no right of refusal as to those shares. *Id.* at 17 n.5. And, Genger suggested that the Trump Group had no right to buy the Sagi Trust Shares from TPR, because it was not a “permitted transferee.” Def’s. Post-Tr. Reply Br. 18 n.24 (Feb. 5, 2010). None of these arguments was convincing and all were rejected.

On appeal, Genger changed counsel, and some of his arguments. He pressed again his arguments that the Trump Group ratified the 2004 transfer of shares to the Sagi Trust, and that the Sagi Trust Shares were subject to the irrevocable proxy. Corrected Appellant’s Op. Br. 17-23, No. 592, 2010 (Del. Nov. 16, 2010). He also renewed the argument that, because Genger was a permitted transferee, the transfers should not be voided as to him. *Id.* at 28.

But, as the Supreme Court noted, he subtly altered his argument as to when the Sagi Trust executed a proxy in favor of Genger. At trial, Genger represented that the Sagi Trust executed the proxy on the same day as the transfer of shares took place; on appeal, he argued that the Sagi Trust executed the proxy on the *following* day. Supr. Ct. Op. 197. The Supreme Court therefore declined to consider Genger’s new reason why the proxy should be considered valid under New York law. And, more strikingly, Genger made an “about-face” on whether the court should have decided the question of the ownership of the Genger and Orly Trust Shares, and argued that the court had no right to do that, *even though he had asked the court to decide this in his counterclaim.* Supr. Ct. Op. 199; *see* Corrected Appellant’s Op. Br. 24-28, No. 592, 2010 (Del. Nov. 16, 2010).

¹²⁷ N.Y. 2013 Op. 14.

¹²⁸ Supr. Ct. Op. 194-96 (upholding this court’s finding that the Trump Group did not ratify the transfers of the Sagi Trust Shares); *id.* at 198 (upholding this court’s finding that the Trump Group could vote the Sagi Trust Shares).

right to buy them.¹²⁹ And, the Revised Final Judgment Order, which the parties agreed on, provided explicitly that the Trump Group had a right to purchase TPR's stake in Trans-Resources.¹³⁰

Nevertheless, Genger has suggested to this court that the Revised Final Judgment Order is not "final," because it provides that the Trump Group is "presently" the owner of its original 47.15% stake in Trans-Resources and the Sagi Trust Shares.¹³¹ According to Genger, "presently" meant at that moment, and did not prevent him from relitigating the consequences of past events settled definitively by the Revised Final Judgment Order. The implication of this, in Genger's view, is that Genger retains the right to relitigate the ownership of the Sagi Trust Shares.¹³² I have rejected this argument, as it would make a mockery of the finality of this court's and our Supreme Court's decisions.¹³³ After I rejected this argument, Genger offered to stipulate that the word "presently" does no work in the Revised Final Judgment Order,¹³⁴ but he nevertheless stressed it twice in his brief in opposition in this motion.¹³⁵ I reject this argument again. In any case, Genger

¹²⁹ *Id.* at 201.

¹³⁰ Rev. Final J. Order ¶ 12 ("As a result [of the violation of the Stockholders Agreement], the transfers were void, the purportedly transferred shares continued at all times to be owned of record by TPR, and Investors and Glenclova had the right under Section 3.2 of the Stockholders Agreement to buy all of the shares purportedly transferred by TPR.").

¹³¹ Tr. of Oral Arg. 81:4-19 (Aug. 30, 2012).

¹³² See Def's. Opp'n to Pls.' Second Mot. To Reopen Case 2-3 (Sept. 25, 2012).

¹³³ Tr. of Oral Arg. 81:15-82:3, 101:19-102:2 (Aug. 30, 2012).

¹³⁴ Def's. Opp'n to Pls.' Second Mot. To Reopen Case 2-3 (Sept. 25, 2012) ("Arie Genger hereby offers to stipulate that the inclusion of the word 'presently' does not change the meaning of the order as compared to its meaning excluding the word 'presently,' without prejudice to his ability otherwise to prosecute his remaining claims, in whatever court or courts ultimately hear them.").

¹³⁵ Genger Br. in Opp'n 17, 18.

has only claimed that the Trump Group's ownership of its original holding in Trans-Resources and the Sagi Trust Shares is ephemeral, not that its right to buy the Genger and Orly Trust Shares is likewise temporary.

Finally, as to the fourth prong of the test, I have explained why my resolution of the three issues I have identified was essential to the ruling. First, these issues were essential to the question of who owned, and could vote, the Sagi Trust Shares—which was central to the § 225 action. If the Trump Group did not have the right to buy these shares, it would not have been able to vote them or designate a majority of the Trans-Resources board.

Furthermore, the resolution of these issues was also essential to the question of who could vote the Genger and the Orly Trust Shares. It was necessary to find that the 2004 transfers were void, and that the shares reverted to TPR, to determine that TPR had the right to vote the Genger and Orly Trust Shares. The Supreme Court upheld this finding.¹³⁶ The Supreme Court also observed that the blocks of shares transferred out of TPR were identically situated: just as the Trump Group had the right to buy the Sagi Trust Shares, because these shares were transferred in violation of the Stockholders Agreement, the Trump Group also had the right to buy the improperly transferred Genger

¹³⁶ Supr. Ct. Op. 201 (holding that this court's determination "that TPR was the record owner [of] and entitled to vote" the Genger and Orly Trust Shares "pose[d] no problem").

and Orly Trust Shares.¹³⁷ Therefore, the fourth prong of the Supreme Court's issue preclusion test is satisfied.

Accordingly, the issues that were already decided by this court and the Supreme Court—that Genger wrongly transferred the Trans-Resources shares from TPR, that these shares reverted to TPR, and that the Trump Group has the right to purchase them—have preclusive effect in this action.¹³⁸

2. Genger May Not Avoid The Preclusive Effects Of The Prior Judgments
By Arguing That He Was Held To A Higher Standard Of Proof

As I have noted, Genger's burden of proof in the prior litigation was raised from the preponderance standard to the "clear and convincing" standard, as part of the sanctions he received in the contempt action for despoiling evidence. He argued to the New York Supreme Court that, because he bore a higher burden of proof in the prior Delaware action than in the New York Action, the Delaware action should not have issue preclusive effect.¹³⁹ The New York court rejected that argument.¹⁴⁰

¹³⁷ *Id.* at 199 (rejecting the contention that "the Trump Group's right to buy, and TPR's right to sell, the Genger Shares and the Orly Trust Shares were 'collateral' issues").

¹³⁸ *See Technicorp Int'l II, Inc. v. Johnston*, 1997 WL 538671, at *8 (Del. Ch. Aug. 25, 1997) ("[F]indings made in a § 225 action may be accorded collateral estoppel effect where the relevant criteria are otherwise satisfied . . .").

¹³⁹ N.Y. 2013 Op. 10.

¹⁴⁰ *Id.* 13-14.

In his brief to this court, Genger appears to waive that argument.¹⁴¹ But, because Genger's waiver is ambiguously phrased,¹⁴² I say why the heightened burden of proof that Genger bore in the prior action does not make any difference to this case.

Although it is true that relitigation of an issue may be precluded if "[t]he party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action," this doctrine has no application in the circumstances here.¹⁴³ As the New York Supreme Court said: "[T]he Chancery Court imposed on Arie a higher burden of proof as a sanction for spoliating evidence and contempt of court. To permit him to relitigate his claims here would render the sanction nugatory."¹⁴⁴ Genger's own conduct is what changed the preponderance standard, which was the preexisting standard. The cure for his taint of the evidentiary record was to elevate the burden of persuasion, because he had made it impossible for the Trump Group to have a fair chance to litigate on a trustworthy evidentiary record.¹⁴⁵ It would defeat the equitable nature of the doctrine of issue preclusion if Genger, having

¹⁴¹ Def's. Br. in Opp'n 22 ("Collateral estoppel does not determine the beneficial ownership of the Genger Shares not because of the standard by which this Court decided beneficial ownership, but because this Court's decisions as to beneficial ownership were reversed.").

¹⁴² *Id.* at 21-22 ("There is ample authority that a party who fails to prove something by clear and convincing evidence, for example, is not collaterally estopped from attempting to prove it by a preponderance of the evidence. . . . The parties dispute whether those cases ought to apply where, as here, the heightened burden of proof derives not from the substantive legal claim but from a contempt sanction.").

¹⁴³ Restatement (Second) of Judgments § 28(4) (1982).

¹⁴⁴ N.Y. 2013 Op. 14.

¹⁴⁵ *See* Dec. 2009 Op. *19 (stating that the contempt sanction would "deprive Genger of the advantages of any evidentiary gaps that his own misbehavior might have . . . caused").

been held to a higher burden of proof because of his contempt, was able to *benefit* from this higher burden later by using it to deny preclusive effect to the prior judgment.¹⁴⁶

This reasoning has been endorsed by the United States Court of Appeals for the Third Circuit. In *Wolstein v. Docteroff*, the court found that a default judgment for damages in a fraud action that had been imposed on a defendant as a sanction for his bad-faith refusal to comply with discovery requests precluded the defendant from arguing, in a later bankruptcy proceeding, that the debt was not the result of fraud (and was thus dischargeable).¹⁴⁷ The court “d[id] not hesitate” in holding that the sanction on the defendant had preclusive effect, and noted that “[t]o hold otherwise would encourage behavior similar to [the defendant’s] and give litigants who abuse the processes and dignity of the court an undeserved second bite at the apple.”¹⁴⁸ The logic of *Docteroff* applies to this case: Genger cannot avoid the preclusive effect of the prior rulings simply because he was given a more lenient contempt sanction than a default judgment.¹⁴⁹

¹⁴⁶ See, e.g., *PenneCom B.V. v. Merrill Lynch & Co.*, 372 F.3d 488, 493 (2d Cir. 2004) (“[C]ollateral estoppel is an equitable doctrine”); *Nations v. Sun Oil Co. (Del.)*, 705 F.2d 742, 744 (5th Cir. 1983) (same).

¹⁴⁷ *Wolstein v. Docteroff (In re Docteroff)*, 133 F.3d 210 (3d Cir. 1997).

¹⁴⁸ *Id.* at 215.

¹⁴⁹ Dec. 2009 Op. 19 (declining to grant a default judgment against Genger). Other courts have applied the same reasoning as *Docteroff*. See, e.g., *Cnty. State Bank v. Strong*, 651 F.3d 1241, 1261-71 (11th Cir. 2011) (applying Georgia law, and granting preclusive effect to a state court’s striking of arbitration defenses as a sanction for “repeated and flagrant discovery violations”); *Bush v. Balfour Beatty Bah., Ltd. (In re Bush)*, 62 F.3d 1319, 1323-25 (11th Cir. 1995) (noting that the “general rule” is that default judgments are not given issue preclusive effect, but holding that it was not an abuse of discretion for a trial court to give preclusive effect to a default judgment granted against the defendant because of the defendant’s abuse of the discovery process).

In any event, I found in my post-trial decision that Genger would not have prevailed on the question of whether TPR had given proper notice to the Trump Group under the Stockholders

Therefore, Genger is precluded from relitigating the issues that were decided in the previous litigation.

3. Genger Is Not Entitled To Relitigate The Prior Action

The doctrine of issue preclusion “is designed to provide repose and put a definite end to litigation.”¹⁵⁰ Therefore, “once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.”¹⁵¹

Accordingly, Genger may not now try to relitigate the 2004 transfers, or the Trump Group’s right to purchase the Trans-Resources shares transferred from TPR. Genger himself acknowledges that he is not entitled to relitigate the transfers if my prior rulings are given preclusive effect.¹⁵² Therefore, I now move on to the only remaining question in the case, which is whether the Trump Group has in fact exercised its right to purchase the Genger Shares.

B. The Trump Group Has Purchased The Genger Shares From TPR

Under Court of Chancery Rule 56(e), a party may support its motion for summary judgment with an affidavit “made on personal knowledge” and “set[ting] forth such facts

Agreement “even if [the Trump Group] had the burden to show that they had not been given proper notice.” July Op. 15. And Genger himself, in his briefing to the Supreme Court, represented that this court “stated in its July and August opinions that it would not have found in favor of Arie under any burden of proof.” Corrected Appellant’s Op. Br. 33, No. 592, 2010 (Del. Nov. 16, 2010).

¹⁵⁰ *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1216 (Del. 1991) (citation omitted).

¹⁵¹ *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (citation omitted).

¹⁵² Genger Br. in Opp’n 25 (“The Trumps Are Not Entitled To Summary Judgment Absent Preclusion”).

as would be admissible in evidence.”¹⁵³ The party opposing summary judgment may not merely deny the facts in the affidavit, but “by affidavits or . . . otherwise” must “set forth specific facts showing that there is a genuine issue for trial.”¹⁵⁴ If the opposing party cannot provide an affidavit contesting the facts set forth in the moving party’s affidavit, it may, under Rule 56(f), furnish an affidavit showing why discovery is required.¹⁵⁵

The Trump Group has provided an affidavit from Mark Hirsch, an officer of Trans-Resources, attesting that the Trump Group has exercised its rights to buy the Genger Shares under its Side Letter Agreement with TPR, and that it has placed the funds for the shares in escrow.¹⁵⁶ Genger has not challenged this with an affidavit of his own. Instead, counsel for Genger has submitted an affidavit under Rule 56(f) asserting that more discovery is required into certain factual issues.

But, Genger’s counsel’s Rule 56(f) affidavit does not actually challenge the fact that the Trump Group has exercised its rights to purchase the Genger Shares by placing the money for those shares into escrow. Instead, Genger’s counsel raises a variety of theories as to why the purchase was improper. None of these theories sets forth any reason to believe that there is a “genuine issue for trial” as to the purchase of the Genger Shares. Rather, the theories in the affidavit are an attempt to relitigate the issues that are precluded by my earlier decisions. Nevertheless, in the interests of completeness, I now

¹⁵³ Del. Ct. Ch. R. 56(e).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* 56(f).

¹⁵⁶ Hirsch Aff. ¶¶ 4-5, 7, C.A. No. 6697-CS (Nov. 12, 2012).

show in more detail why Genger's arguments to avoid summary judgment, including those in his counsel's affidavit, are not effective.

C. Genger's Arguments Cannot Defeat Summary Judgment

I first discuss the arguments that Genger puts forward, through his counsel's affidavit, in an attempt to raise a triable issue of fact to defeat summary judgment. Then, I consider his new argument that TPR did not originally have an economic ownership interest in Trans-Resources' stock.

1. The Theories In Genger's Counsel's Affidavit Do Not Set Forth Any Triable Issues Of Fact

In his affidavit, counsel for Genger asserts, on personal knowledge, that there are issues of fact that require discovery as to: (i) whether TPR was permitted to sell the Genger shares to the Trump Group;¹⁵⁷ (ii) whether Sagi breached his fiduciary and contractual duties in selling his shares;¹⁵⁸ (iii) whether the Trump Group was complicit in such a breach;¹⁵⁹ (iv) whether TPR sold the Genger Shares at an unfairly low price;¹⁶⁰ (v) whether the Trump Group improperly bought the Genger Shares outside of the Stockholders Agreement;¹⁶¹ and (vi) whether the Trump Group lied to this court about its negotiations with Bank Hapoalim to refinance Trans-Resources.¹⁶²

¹⁵⁷ Lamb Aff. ¶ 12(a).

¹⁵⁸ *Id.* ¶ 12(b).

¹⁵⁹ *Id.* ¶ 12(c).

¹⁶⁰ *Id.* ¶ 12(d).

¹⁶¹ *Id.* ¶ 12(e).

¹⁶² *Id.* ¶¶ 13-16.

As to Genger's first theory, I rejected Genger's argument that the alleged need to reform his divorce settlement should have any impact on this case, and the New York Supreme Court agreed.¹⁶³ The Trump Group has also pointed to evidence demonstrating as a matter of fact that even without the 2004 transfers, Genger's marriage settlement would not be void for lack of consideration, and thus would not be annulled entirely under New York law.¹⁶⁴

Genger's second and third theories—the claims that Sagi has breached his fiduciary and contractual duties, and that the Trump Group is complicit in this breach—are also irrelevant to this action. Sagi was not a party to the divorce agreement, and counsel for Genger has not pointed to any other contract that Sagi may have breached.¹⁶⁵ The New York Supreme Court dismissed Genger's claim against the Sagi Trust and TPR for breach of contract, and also his claim against Sagi, the Sagi Trust, and the trustee of the Sagi Trust for aiding and abetting tortious interference with contract.¹⁶⁶ As I stated in my August 2010 opinion, it may be that Genger and Orly have a claim against the TPR

¹⁶³ See July 2010 Op. *18 (“Genger only has himself to blame for whatever mess his decision to make the 2004 Transfers has caused for his divorce settlement. . . . [I]t is not the Trump Group’s problem . . .”); N.Y. 2013 Op. 16 (“[A]s Trump Group was not a party to the divorce stipulation, Arie’s and Dalia’s alleged ‘mutual mistake’ in effecting the 2004 Transfers is immaterial and may not be used as a defense in Arie’s dispute with Trump Group. Moreover, Arie seeks to undo the Delaware courts’ adverse findings against him and Trump Group’s right to buy the ‘invalidly transferred shares,’ notwithstanding that they were transferred as a result of his misrepresentation in the divorce stipulation In any event, any equitable or contractual right in favor of Arie to reform the divorce stipulation does not override the pre-existing contractual right of Trump Group to purchase the invalidly transferred shares”).

¹⁶⁴ See MSA art. II § 2 (describing property Genger received under the divorce agreement); see also *Apfel v. Prudential-Bache Secs. Inc.*, 600 N.Y.S.2d 433, 435 (1993) (holding that courts will not avoid a contract on grounds of inadequacy of consideration alone).

¹⁶⁵ See MSA pmbl.; Lamb Aff. ¶ 12(b).

¹⁶⁶ N.Y. 2013 Op. 29-31.

and Sagi for some sort of breach of an implied equitable duty in the way in which the proceeds from the sale of the TPR's stake in Trans-Resources were allocated.¹⁶⁷ But, this has nothing to do with the question of whether the 2004 transfers were invalid, and whether the Trump Group had the right to purchase the shares from TPR.¹⁶⁸ The New York Supreme Court agreed with this analysis.¹⁶⁹ Genger has not disputed that he ceded control of TPR to Dalia in his divorce settlement, that Dalia therefore had the right to cede TPR to Sagi, and that Sagi thereafter had the right to, and continues to, control TPR.¹⁷⁰ Genger is not a stockholder, officer, or director of TPR. He concedes that TPR is directed and controlled by Sagi. Genger has thus raised no triable issue of fact over TPR's actual or apparent authority to sell Trans-Resources' stock to the Trump Group.

The fourth issue, *i.e.* the adequacy of the price paid, is related to the second and third issues. As I have said, Genger may have a claim a breach of fiduciary duty against

¹⁶⁷ Aug. 2010 Op. *3 (“[I]t may well be that the bargain that TPR—a company that Arie Genger allowed to pass out of his control—struck poses some equitable problem for TPR. That is, it may be that Genger and Orly Genger have claims against TPR and Sagi Genger over how the price paid by the Trump Group for the Arie and Orly Shares was allocated.”).

¹⁶⁸ *Id.*

¹⁶⁹ *E.g.*, N.Y. 2013 Op. 25 (refusing to dismiss a claim of unjust enrichment against Sagi and TPR); *id.* at 28 (refusing to dismiss a claim of breach of fiduciary duty against Sagi).

¹⁷⁰ Genger has disputed Sagi's control of TPR in the New York action only by seeking to have his eight-year-old divorce reformed. That claim was rejected by the New York Supreme Court. *See* N.Y. 2013 Op. 34 (dismissing Genger's argument that his divorce should be reformed so that Dalia was not ceded 51% of TPR). In the previous Delaware litigation, Genger cast doubt on Sagi's right to control TPR, but did not seriously challenge this point. *See* Def's. Pre-Tr. Br. 3 (Dec. 3, 2009) (“If the transfer of shares to the Sagi Trust in October 2004 is void, then so too must be the transfer to Mr. Genger's ex-wife, Dalia Genger, of TPR; otherwise, Sagi Genger, who now controls TPR, would obtain direct control over the TRI shares returned to TPR—the very result that voiding the transfer to his trust was intended to prevent.”); *see also* Def's. Post-Tr. Reply Br. 1 (Feb. 5, 2010) (same).

TPR and Sagi.¹⁷¹ The New York Supreme Court also found that a claim for unjust enrichment may lie against the Trump Group.¹⁷² But, that claim does not affect the validity of the Trump Group's purchase of Trans-Resources stock from TPR, and ownership of that stock.

Genger's fifth theory is that TPR did not have the right to sell the Genger Shares outside of the Stockholder Agreement.¹⁷³ The Trump Group bought the Genger Shares under the Side Letter Agreement. Genger therefore argues that the Trump Group has not purchased the Genger Shares in accordance with the Revised Final Judgment Order, which provided that the Trump Group "had the right under Section 3.2 of the Stockholders Agreement to buy all of the shares purportedly transferred by TPR."¹⁷⁴ Genger's argument fails for two reasons.

First, in both the July and the August opinions, I found that the Trump Group was permitted to negotiate, with TPR, its rights under § 3.2 of the Stockholders Agreement.¹⁷⁵ In the August opinion, I held specifically that the Side Letter Agreement constituted a compromise of the Trump Group's rights under § 3.2 of the Stockholders Agreement.¹⁷⁶ The Supreme Court rejected Genger's assertion that this court lacked jurisdiction to make such a holding.¹⁷⁷ Therefore, because the Revised Final Judgment Order stated that the Trump Group had the right to buy the Genger shares from TPR under the Stockholders

¹⁷¹ Aug. 2010 Op. *3.

¹⁷² N.Y. 2013 Op. 19.

¹⁷³ Lamb Aff. ¶ 12(e).

¹⁷⁴ Rev. Final J. Order ¶ 12.

¹⁷⁵ July 2010 Op. *17; Aug. 2010 Op. *2-3.

¹⁷⁶ Aug. 2010 Op. *2-3.

¹⁷⁷ Supr. Ct. Op. 199.

Agreement, it follows that the Trump Group had the right to buy the Genger Shares under the Side Letter Agreement, and that Genger cannot relitigate this issue now.

Second, and equally important, Genger is not permitted to raise TPR's rights under the Stockholders Agreement. Genger is not a party to the Stockholders Agreement.¹⁷⁸ Therefore, he has no standing to make an argument on behalf of TPR, a company in which he owns no shares and holds no office. In my previous rulings, I rejected Genger's attempt to claim rights under the Stockholders Agreement, because Genger never signed on to that Agreement.¹⁷⁹ Therefore, Genger's argument that the Trump Group improperly bought the Genger Shares under the Side Letter Agreement fails.

The final issue that Genger's counsel raises is regrettable. Genger's counsel suggests that the Trump Group may have lied to this court in the prior action about its negotiations with Bank Hapoalim.¹⁸⁰ This powerful and reputationally damaging suggestion is entirely speculative, and relies on an unsworn translation of a supposed indictment in Israel of a former Bank Hapoalim executive in connection with actions that appear to be unrelated to this case, and unrelated to the Trump Group. Genger's counsel does not suggest a rational basis for his contention that he is "personally familiar" with this indictment, as he swears, and he does nothing to connect the conduct underlying this

¹⁷⁸ See SA pmb1.

¹⁷⁹ See July 2010 Op. *22 n.147.

¹⁸⁰ Lamb Aff. ¶¶ 13-16.

indictment to Trans-Resources itself, the Trump Group, or the facts of this case.¹⁸¹

Therefore, Genger cannot rely on it in his attempt to defeat the Trump Group's motion.¹⁸²

2. Genger's Argument That TPR Was A "Custodian" For Trans-Resources
Stock Is Untenable

In his briefing, Genger advances the entirely novel argument that, after the Trans-Resources stock reverted to TPR following our Supreme Court's decision in 2011, TPR only became a "custodian" for this stock, and was not an economic owner of the Genger and Orly Trust Shares.¹⁸³ Under Genger's logic, TPR cannot have owned the Trans-Resources stock before the transfer if, after it reverted to TPR, TPR was merely a custodian for the stock.

Genger is judicially estopped from making this argument. The doctrine of judicial estoppel "acts to preclude a party from asserting a position inconsistent with a position previously taken in the same or earlier legal proceeding."¹⁸⁴ Genger's argument directly contradicts his position in the prior litigation, in which he argued that TPR had full

¹⁸¹ *Id.* ¶ 1.

¹⁸² See *Geier v. Meade*, 2004 WL 243033, at *8 (Del. Ch. Jan. 30, 2004) ("This Court's Rules require more than . . . speculation to defeat a motion for summary judgment.").

For completeness, I here note an allegation that Genger put forward in his brief, but which his counsel did *not* make in his affidavit. This allegation is that Sagi received the money from the sale of the Genger Shares improperly. Genger Br. in Opp'n 26. The Trump Group's affidavit attests that the money for the Genger Shares was paid into an escrow account, under the terms of the Escrow Agreements. Hirsch Aff. ¶¶ 4-5, C.A. No. 6697-CS (Nov. 12, 2012). Genger does not contradict this with an affidavit or record evidence. And, by making this unsupported suggestion in his brief, Genger has not shown that there is any genuine issue of fact relating to the payment of the funds.

¹⁸³ Genger Br. in Opp'n 16.

¹⁸⁴ *Motorola, Inc. v. Amkor Tech., Inc.*, 958 A.2d 852, 859 (Del. 2008).

ownership of the Trans-Resources stock, and not only record ownership.¹⁸⁵ Genger consistently argued to this court that, before 2004, TPR had full control of 52.85% of Trans-Resources. Under the 2004 transfers, according to Genger, the Trans-Resources stock was distributed to Genger, the Sagi Trust, and the Orly Trust, and Genger retained an irrevocable proxy over the Sagi Trust Shares and the Orly Trust Shares.¹⁸⁶ Genger's argument, therefore, was predicated on the fact that TPR had economic, as well as record, ownership of the Trans-Resources shares. And, when he argued that the Sagi Trust did not have the right to sell the Sagi Trust Shares to the Trump Group, Genger raised many arguments, but never claimed that the Sagi Trust and the Orly Trust did not own the economic interest in their respective blocks of shares. In fact, Genger attempted to make an equitable argument out of the fact that the Orly Trust *did* own the economic interest in the Orly Trust Shares.¹⁸⁷ Because the Genger Shares are indistinguishable from the Orly Trust Shares, Genger may not argue now that TPR did not hold the economic interest in the Genger Shares.

Genger's 180° spin is made plain by his main alternative argument in the prior litigation. That argument went like this: "Even if I caused TPR to violate the

¹⁸⁵ See, e.g., Def's. Pre-Tr. Br. 8 (Dec. 3, 2009) ("Pursuant to the Stockholders Agreement, Mr. Genger continued to control TRI through his majority interest in TPR, which still owned a majority of TRI's outstanding stock."); Def's. Post-Tr. Op. Br. 3 (Jan. 15, 2010) ("[A]t best, the Trumps would have been entitled to purchase only the economic rights associated with the transferred shares . . .").

¹⁸⁶ E.g., Def's. Post-Tr. Op. Br. 47-48 (Jan. 15, 2010) (describing the distribution of the TPR Shares and the functioning of the irrevocable proxies).

¹⁸⁷ *Id.* at 5 ("[O]f all the inequities that would result in this case if Plaintiffs were to have their way, there is probably none greater than if Mr. Genger's daughter, Orly, were to be left disinherited.").

Stockholders Agreement, and gave the Trump Group the right to buy the wrongfully transferred Trans-Resources stock, the Trump Group could only obtain the economic interest in these shares, because my irrevocable proxy gave me voting control over them.”¹⁸⁸ The reason for that prior argument is simple. Genger could not argue that economic rights to the shares did not belong to TPR without committing intentional fraud. Why? Because in both the Stockholders Agreement and his divorce settlement, he said that TPR had full ownership over the Trans-Resources stock. In the Stockholders Agreement, TPR, controlled by Genger, represented and warranted that “TPR, [TR] Investors and Glenclova directly and indirectly own 100% of the outstanding common stock . . . of [Trans-Resources].”¹⁸⁹ The Agreement later specified that “TPR owns 52.85% of the outstanding Shares,” with no suggestion that this ownership might not be complete.¹⁹⁰ And, in his divorce agreement, Genger represented that, apart from the Trump Group, TPR, and Bank Hapoalim, no party had any ownership interests in Trans-Resources.¹⁹¹ Therefore, Genger cannot now argue that TPR only had record ownership of its Trans-Resources stock without admitting that, through TPR, he made a misrepresentation in the Stockholders Agreement, and that he made *two* misrepresentations in his divorce agreement.¹⁹² Put bluntly, facing a properly supported summary judgment motion, Genger has not filed an affidavit swearing that his former

¹⁸⁸ See Def’s. Post-Tr. Op. Br. 15-23 (Jan. 15, 2010); see also Supr. Ct. Op. 196-98 (rejecting Genger’s proxy argument).

¹⁸⁹ SA pmbl.

¹⁹⁰ *Id.* § 1.6.

¹⁹¹ MSA art. II ¶ 9(a).

¹⁹² Genger’s other misrepresentation in his divorce agreement, as noted above, was that he did not need any consents for the 2004 transfers. See Supr. Ct. Op. 184.

binding legal representations that TPR had full ownership were false. There is thus no material issue of fact for trial.

* * *

In conclusion, I find that the Trump Group is entitled to summary judgment on the question of whether it has purchased the Genger Shares. The Trump Group is the owner of these shares and may vote them as it sees fit.

IV. TPR Is Not Entitled To Summary Judgment On Its Cross-Motion To Have The Funds Paid For The Genger Shares Released From Escrow

TPR has filed a cross-motion seeking an order requiring the Trump Group to agree to release the escrowed sales proceeds from the Genger Shares. I deny TPR's motion, because it is an attempt unilaterally to modify its bargain with the Trump Group.

The release of the escrow money is governed by the Escrow Agreements and the injunction of the New York Supreme Court. The First Escrow Agreement, entered into in September 2010, provided that the Trump Group would put \$5,928,994 of the purchase price for the Genger Shares into escrow—*i.e.*, all but \$1.5 million of it.¹⁹³ In October 2010, the New York Supreme Court entered a TRO providing that “the \$1.5 million that is imminently to be paid by the Trump Entities to TPR pursuant to the purported 2010 TPR Sale of TRI Stock to the Trump Entities be placed in an escrow account.”¹⁹⁴ The

¹⁹³ First Escrow Agreement 2.

¹⁹⁴ Order To Show Cause & TRO, N.Y. Action, at 3 (Oct. 5, 2010).

Trump Group and TPR entered into a Second Escrow Agreement in January 2011, whereby the Trump Group agreed to place the \$1.5 million in escrow also.¹⁹⁵

The First Escrow Agreement provides that the Trump Group and TPR may jointly request to have the funds released from escrow.¹⁹⁶ If the Trump Group and TPR do not jointly submit a request to the escrow agent to release the funds, TPR may submit to the escrow agent a written request to disburse the funds, together with “a certified copy of a judgment of the Delaware Supreme Court affirming [this court’s Final Judgment] Order in so far as it determined that (a) the 2004 Transfer of the Shares was void and (b) the Purchasers have a contractual right to purchase the Shares under the [Side] Letter Agreement” or other evidence that this court’s judgment is final and unappealable.¹⁹⁷

The Trump Group has refused to agree to the disbursement of the funds in the escrow agreement, and TPR now asks me to issue an order directing that the escrow proceeds be released. TPR ignores the fact that it and the Trump Group bargained for a mechanism by which TPR could obtain the funds without the Trump Group’s consent. If this decision is affirmed on appeal, or if Genger chooses not to appeal it, TPR will have the right to get the funds released. It is not hard to see why the Trump Group and TPR struck this bargain: by waiting for the decision to become final and unappealable, the parties avoid the risk that they will have to waste time and money in reversing the disbursement of the escrowed funds if this decision is overturned. TPR has not offered

¹⁹⁵ Second Escrow Agreement 2.

¹⁹⁶ First Escrow Agreement § 2(b)(i).

¹⁹⁷ *Id.* § 2(b)(ii), (iv).

any reason why I should override the parties' bargain simply in order that it may get the proceeds from the Genger Shares more quickly, and I decline to do so.¹⁹⁸

The Second Escrow Agreement, concerning the \$1.5 million, operates differently from the First Escrow Agreement. Under this Agreement, TPR may submit an application to have funds released together with the Trump Group, or on its own.¹⁹⁹ If TPR submits an application on its own, the Trump Group has ten days in which to object to the disbursement.²⁰⁰ Under this Agreement, any party seeking a disbursement of the escrowed funds must provide a "certification . . . of the Party seeking such disbursement that the NY [Temporary Restraining] Order has been vacated, reversed, dismissed, modified, amended or clarified in such a manner as to permit the Escrow Agent to make such a disbursement."²⁰¹

TPR argues that the injunction entered by the New York Supreme Court will expire by its own terms once this court has determined the beneficial ownership of the Genger Shares, and therefore the escrow agent will be authorized to release the funds.²⁰² But, there is no need for me to enter an order adjudicating the Trump Group's and TPR's rights. Instead, TPR must follow the mechanism for releasing the proceeds laid out in the contract that it bargained for with the Trump Group. TPR must ask the escrow agent to accept its certification that the New York injunction has expired.

¹⁹⁸ See, e.g., *Related Westpac LLC v. JER Snowmass LLC*, 2010 WL 2929708, at *10 (Del. Ch. July 23, 2010) ("Delaware law respects the freedom of parties in commerce to strike bargains and honors and enforces those bargains as plainly written.") (citations omitted).

¹⁹⁹ Second Escrow Agreement § 2(b).

²⁰⁰ *Id.* § 2(b)(ii).

²⁰¹ *Id.* § 2(a).

²⁰² TPR Reply Br. 4-5.

To be sure, the escrow agent, which is the Skadden firm, counsel for the Trump Group, may well demand a formal vacating or modification of the injunction in the New York Supreme Court before it agrees to disburse the funds.²⁰³ And TPR may well be frustrated by having to go to court in New York to request that the injunction be lifted. But, this is the bargain that the parties struck. Again, it is not hard to see why the Trump Group would have wanted the right to ensure that the New York injunction is lifted before the money was disbursed: otherwise it would risk being in contempt of court. TPR has given me no reasons to disturb the parties' bargain. Therefore, TPR's cross-motion for summary judgment is denied.

V. Conclusion

I grant summary judgment in favor of the Trump Group on its claim that it is the owner of the Genger Shares. I deny TPR's motion seeking an order to have the escrowed funds released.

I now add a postscript about the future course of this dispute. Even if Genger chooses not to appeal this ruling, this is not necessarily the end of the litigation between him and the Trump Group in this court. In November, I granted the Trump Group's motion to reopen the prior action and issued an order for Genger to show cause why he

²⁰³ Second Escrow Agreement § 7(b) ("Escrow Agent as Counsel). It is understood and acknowledged that the Escrow Agent is acting as counsel to (i) the Purchasers in connection with matters concerning the Delaware Action and related litigation The Escrow Agent's acceptance of its appointment and performance of its duties hereunder shall not be deemed in any way to conflict with its professional obligations to the Purchasers").

should not be held in contempt for flouting the Revised Final Judgment Order.²⁰⁴ I found that Genger was attempting to relitigate in New York Supreme Court the ownership of the Sagi Trust Shares, which was settled for good in the Revised Final Judgment Order.²⁰⁵ I also noted that Genger had sought an injunction to prevent TPR from voting the Genger and Orly Trust Shares, even though the Revised Final Judgment Order states that TPR is the “record owner” of these shares. Although the New York Supreme Court denied this request, it entered an injunction requiring the Trump Group and TPR to give Genger ten business days’ notice of any transactions that “impact” these shares.²⁰⁶ The effect of this injunction, I observed, was to prevent the Trump Group from managing Trans-Resources as it had the right to under the Revised Final Judgment, and from realizing its wealth-creating potential as a Delaware corporation. The briefing for the Trump Group’s contempt motion will be complete in about two months.

With the issuance of this opinion, there are now not one but two judicial decisions adverse to Genger’s efforts to relitigate who has majority control of Trans-Resources.²⁰⁷ This court rarely imposes the powerful sanction of contempt, and never does so with anything but regret.

Even at this late stage, one should not take action to prevent a *rational* end to this protracted struggle. Rather than proceed to decide the contempt motion immediately, I want the parties to confer with their clients, and consider the implications of these *two*

²⁰⁴ *T.R. Investors, LLC v. Genger*, 2012 WL 5471062 (Del. Ch. Nov. 9, 2012).

²⁰⁵ *Id.* at *2.

²⁰⁶ *Id.* (quoting N.Y. 2011 Op. 15).

²⁰⁷ *See* N.Y. 2013 Op.